The Ontario Securities Commission

OSC Bulletin

July 27, 2007

Volume 30, Issue 30

(2007), 30 OSCB

The Ontario Securities Commission Administers the
Securities Act of Ontario (R.S.O. 1990, c. S.5) and the
Commodity Futures Act of Ontario (R.S.O. 1990, c. C.20)

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Published under the authority of the Commission by:
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One Corporate Plaza
2075 Kennedy Road
Toronto, Ontario
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The OSC Bulletin is published weekly by Carswell, under the authority of the Ontario Securities Commission.

Subscriptions are available from Carswell at the price of $549 per year.

Subscription prices include first class postage to Canadian addresses. Outside Canada, these airmail postage charges apply on a current subscription:

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Outside North America	$400

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ISSN 0226-9325

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Notices / News Releases

1.1 Notices

1.1.1 Current Proceedings Before The Ontario Securities Commission

JULY 27, 2007

CURRENT PROCEEDINGS

BEFORE

ONTARIO SECURITIES COMMISSION

- -

Unless otherwise indicated in the date column, all hearings will take place at the following location:

The Harry S. Bray Hearing Room
Ontario Securities Commission
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Toronto, Ontario
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Suresh Thakrar, FIBC	—	ST
Wendell S. Wigle, Q.C.	—	WSW

SCHEDULED OSC HEARINGS

July 30, 2007 11:00 a.m.	**Roger D. Rowan, Watt Carmichael Inc., Harry J. Carmichael and G. Michael McKenney** s. 127 and 127.1 J. Superina in attendance for Staff Panel: RLS/DLK/ST
August 2, 2007 10:00 a.m.	**Limelight Entertainment Inc., Carlos A. Da Silva, David C. Campbell, Jacob Moore and Joseph Daniels** s. 127 and 127.1 D. Ferris in attendance for Staff Panel: LER/RLS
August 7, 2007 2:30 p.m.	**Land Banc of Canada Inc., LBC Midland I Corporation, Fresno Securities Inc., Richard Jason Dolan, Marco Lorenti and Stephen Zeff Freedman** s. 127 H. Craig in attendance for Staff Panel: PJL/ST
August 28, 2007 10:00 a.m.	**Shane Suman and Monie Rahman** s. 127 & 127(1) K. Daniels in attendance for Staff Panel: JEAT
September 4, 2007 2:30 p.m.	**Juniper Fund Management Corporation, Juniper Income Fund, Juniper Equity Growth Fund and Roy Brown (a.k.a. Roy Brown-Rodrigues)** s.127 and 127.1 D. Ferris in attendance for Staff Panel: ST/RLS

September 5, 2007 10:00 a.m.	***AiT Advanced Information Technologies Corporation, *Bernard Jude Ashe and Deborah Weinstein** s. 127 K. Manarin in attendance for Staff Panel: WSW/HPH/CSP * Settlement Agreements approved February 26, 2007
September 6, 2007 10:00 a.m.	**Jose Castaneda** s. 127 and 127.1 H. Craig in attendance for Staff Panel: WSW/DLK
September 11, 2007 10:00 a.m.	**Al-Tar Energy Corp., Alberta Energy Corp., Eric O'Brien, Bill Daniels, Bill Jakes, John Andrews, Julian Sylvester, Michael N. Whale, James S. Lushington, Ian W. Small, Tim Burton and Jim Hennesy** s. 127(1) & (5) Sean Horgan in attendance for Staff Panel: JEAT/ST
September 17, 2007 10:00 a.m.	**Norshield Asset Management (Canada) Ltd., Olympus United Group Inc., John Xanthoudakis, Dale Smith and Peter Kefalas** s.127 P. Foy in attendance for Staff Panel: WSW/DLK
September 28, 2007 10:00 a.m.	**Jason Wong, David Watson, Nathan Rogers, Amy Giles, John Sparrow, Kervin Findlay, Leasesmart, Inc., Advanced Growing Systems, Inc., Pharm Control Ltd., The Bighub.com, Inc., Universal Seismic Associates Inc., Pocketop Corporation, Asia Telecom Ltd., International Energy Ltd., Cambridge Resources Corporation, Nutrione Corporation and Select American Transfer Co.** s. 127 and 127.1 P. Foy in attendance for Staff Panel: JEAT/ST
September 28, 2007 10:00 a.m.	**Stanton De Freitas** s. 127 and 127.1 P. Foy in attendance for Staff Panel: JEAT/ST
October 9, 2007 10:00 a.m.	**John Daubney and Cheryl Littler** s. 127 and 127.1 A.Clark in attendance for Staff Panel: TBA
October 9, 2007 10:00 a.m.	***Philip Services Corp. and Robert Waxman** s. 127 K. Manarin/M. Adams in attendance for Staff Panel: TBA Colin Soule settled November 25, 2005 Allen Fracassi, Philip Fracassi, Marvin Boughton, Graham Hoey and John Woodcroft settled March 3, 2006 * Notice of Withdrawal issued April 26, 2007

October 12, 2007 10:00 a.m.	**Firestar Capital Management Corp., Kamposse Financial Corp., Firestar Investment Management Group, Michael Ciavarella and Michael Mitton** s. 127 H. Craig in attendance for Staff Panel: TBA
October 22, 2007 10:00 a.m.	**Merax Resource Management Ltd. carrying on business as Crown Capital Partners, Richard Mellon and Alex Elin** s. 127 H. Craig in attendance for Staff Panel: TBA
October 29, 2007 10:00 a.m.	**Mega-C Power Corporation, Rene Pardo, Gary Usling, Lewis Taylor Sr., Lewis Taylor Jr., Jared Taylor, Colin Taylor and 1248136 Ontario Limited** S. 127 A. Sonnen in attendance for Staff Panel: TBA
November 12, 2007 10:00 a.m.	**Hollinger Inc., Conrad M. Black, F. David Radler, John A. Boultbee and Peter Y. Atkinson** s.127 J. Superina in attendance for Staff Panel: TBA
December 10, 2007 10:00 a.m.	**Rex Diamond Mining Corporation, Serge Muller and Benoit Holemans** s. 127 & 127(1) H. Craig in attendance for Staff Panel: TBA
April 2, 2008 10:00 a.m.	**Peter Sabourin, W. Jeffrey Haver, Greg Irwin, Patrick Keaveney, Shane Smith, Andrew Lloyd, Sandra Delahaye, Sabourin and Sun Inc., Sabourin and Sun (BVI) Inc., Sabourin and Sun Group of Companies Inc., Camdeton Trading Ltd. and Camdeton Trading S.A.** s. 127 and 127.1 Y. Chisholm in attendance for Staff Panel: TBA
TBA	**Yama Abdullah Yaqeen** s. 8(2) J. Superina in attendance for Staff Panel: TBA
TBA	**John Illidge, Patricia McLean, David Cathcart, Stafford Kelley and Devendranauth Misir** S. 127 & 127.1 I. Smith in attendance for Staff Panel: TBA
TBA	**Microsourceonline Inc., Michael Peter Anzelmo, Vito Curalli, Jaime S. Lobo, Sumit Majumdar and Jeffrey David Mandell** s. 127 J. Waechter in attendance for Staff Panel: TBA
TBA	**First Global Ventures, S.A., Allen Grossman and Alan Marsh Shuman** s. 127 D. Ferris in attendance for Staff Panel: WSW/ST/MCH
TBA	**Frank Dunn, Douglas Beatty, Michael Gollogly** s.127 K. Daniels in attendance for Staff Panel: TBA

TBA **Sulja Bros. Building Supplies, Ltd. (Nevada), Sulja Bros. Building Supplies Ltd., Kore International Management Inc., Petar Vucicevich and Andrew DeVries**

s. 127 & 127.1

P. Foy in attendance for Staff

Panel: WSW/MCH

TBA **FactorCorp Inc., FactorCorp Financial Inc. and Mark Twerdun**

s. 127

K. Daniels in attendance for Staff

Panel: RLS/ST

ADJOURNED SINE DIE

Global Privacy Management Trust and Robert Cranston

Andrew Keith Lech

S. B. McLaughlin

Livent Inc., Garth H. Drabinsky, Myron I. Gottlieb, Gordon Eckstein, Robert Topol

Andrew Stuart Netherwood Rankin

Portus Alternative Asset Management Inc., Portus Asset Management Inc., Boaz Manor, Michael Mendelson, Michael Labanowich and John Ogg

Maitland Capital Ltd., Allen Grossman, Hanouch Ulfan, Leonard Waddingham, Ron Garner, Gord Valde, Marianne Hyacinthe, Diana Cassidy, Ron Catone, Steven Lanys, Roger McKenzie, Tom Mezinski, William Rouse and Jason Snow

Euston Capital Corporation and George Schwartz

1.1.2 Notice of Commission Approval – Amendments to the Rules of the Toronto Stock Exchange – Direct Access Provisions about Connectivity

TSX INC.

AMENDMENTS TO THE RULES OF THE TORONTO STOCK EXCHANGE REGARDING DIRECT ACCESS PROVISIONS ABOUT CONNECTIVITY

NOTICE OF COMMISSION APPROVAL

The Ontario Securities Commission approved amendments to the rules of the Toronto Stock Exchange regarding direct access provisions about connectivity. The purpose of the amendments is to clarify the connectivity requirements for direct access trading on the Toronto Stock Exchange. The proposed amendments were published for comment on May 12, 2006 at (2006) 29 OSCB 4083 and no comments were received.

1.1.3 CSA Notice 46-304 Update on Principal Protected Notes

CANADIAN SECURITIES ADMINISTRATORS' NOTICE 46-304

UPDATE ON PRINCIPAL PROTECTED NOTES

What is the purpose of this notice?

This notice provides an update on the Canadian Securities Administrators' (CSA) consideration of Principal Protected Notes (PPNs).

What is a PPN?

A PPN is an investment product that offers an investor potential returns based on the performance of an underlying investment and a guarantee that the investor will receive, on maturity of the PPN, not less than the principal amount invested. For the purpose of this notice, PPNs include the instruments commonly described as market-linked GICs and market-linked notes.

Background

On July 7, 2006, the CSA published CSA Notice 46-303 – *Principal Protected Notes* (CSA Notice 46-303) and an Investor Watch which identified a number of the CSA's concerns about PPNs. The key concerns related to four main areas:

1. Inadequate, overly complex and inappropriate disclosure in PPN information statements and marketing materials.

2. Compliance with know your client (KYC) and suitability obligations by registrants in connection with sales of PPNs.

3. Use of PPNs as a vehicle for selling alternative investment products to retail investors.

4. Registrant referrals to purchase PPNs without a determination by a registrant that the referral is in the best interests of the client.

CSA Consultations and Market Analysis

Since the publication of CSA Notice 46-303, the CSA has engaged in extensive consultations with industry stakeholders about the distribution and regulation of PPNs.

The CSA's consultations included meetings with representatives of:

- PPN issuers
- PPN manufacturers and distributors
- the Investment Dealers Association of Canada (IDA)
- the Mutual Fund Dealers Association of Canada (MFDA)
- the *Chambre de la sécurité financière* (CSF)
- law firms
- the federal Department of Finance

PPN Market

According to the October 2006 Investor Economics Report on Market-Linked Instruments, as of June 30, 2006, the total PPN market in Canada represented approximately $30.9 billion in assets, comprised of $13.8 billion of linked notes and $17.1 billion of linked GICs. Based on information contained in the report, as of June 30, 2006:

- Approximately 88% of all issued and outstanding linked notes had been issued by banks listed in Schedule I or Schedule II to the *Bank Act* (Canada);

- Approximately 42% of linked GICs had been issued by banks and trust companies and another 53.5% had been issued by caisses populaires/credit unions.

Based on our consultations and the figures cited in the report, we understand that a majority of PPNs are issued by federally regulated financial institutions, primarily Schedule I and Schedule II banks. We also understand that caisses populaires based in Québec issue the vast majority of the linked GICs that are issued by caisses populaires/credit unions.

Through our consultations, we also understand that approximately 70-80% of linked notes are sold by IDA registrants and another 10% of linked notes are sold by MFDA members and their representatives.

Proposed Federal PPN Regulations

On March 19, 2007, the federal government released its *Budget Plan 2007*. In a companion document to the *Budget Plan 2007* entitled *Creating a Canadian Advantage in Global Capital Markets*, the federal government announced that it will "soon release for comment principles-based regulations for banks that issue [PPNs]…".[1] The Budget companion document includes the following statements about the proposed federal PPN regulations:

- The regulations will ensure that consumers are informed of the fees, returns, risks, and cancellation and redemption rights associated with PPNs;

- The regulations will require information to be clearly disclosed by qualified individuals in order to ensure that investors have the information they need to make more informed investment decisions;

- The regulations will require disclosure after purchase to aid investors in monitoring and tracking their investments.

1 See page 39.

The CSA is consulting with the federal Department of Finance about the proposed federal PPN regulations and has provided comments on drafts of those regulations. We understand that the proposed regulations will apply to all PPNs (whether linked notes or linked GICs) issued by federally regulated financial institutions, including banks and authorized foreign banks under the *Bank Act* (Canada), retail associations under the *Cooperative Credit Associations Act* (Canada) and companies under the *Trust and Loan Companies Act* (Canada). We further understand that the Financial Consumer Agency of Canada (FCAC) will be responsible for compliance and enforcement of the proposed federal PPN regulations.

CSA's Proposed Course of Action

Full Review of Pending Proposed Federal PPN Regulations

Based on the statements made in the Budget companion document and our discussions with federal Department of Finance staff, we expect that the proposed federal PPN regulations will address our key disclosure concerns about PPNs identified in CSA Notice 46-303. Based on the market data that shows federal financial institutions issue a majority of PPNs, the proposed regulations will provide protection for a large proportion of PPN investors. The CSA will fully review the final form of the proposed regulations when the regulations are adopted. The CSA understands that the proposed regulations will be published for comment in the Fall of this year.

A significant portion of PPNs are issued by Québec-based caisses populaires that would not be subject to the proposed federal PPN regulations. Pending publication of those regulations, the *Autorité des marchés financiers* (AMF) will consider the appropriateness of regulating PPNs issued by these entities.

KYC and Suitability Obligations

As discussed above, registrants currently sell a substantial portion of linked notes. We think that compliance with KYC and suitability obligations are a critical aspect of investor protection and should apply to sales of all PPNs by registrants (except where a specific exemption exists). The IDA has confirmed that its regulations and by-laws that concern KYC and suitability obligations apply in respect of all dealings by its members, without limitation as to the type of investment product being sold. The CSA has initiated discussions with the MFDA regarding changes to MFDA rules that would confirm the application of KYC and suitability obligations to dealings in PPNs by MFDA members and their representatives. In Québec, mutual funds dealers are members of the CSF and are subject to the *Regulation respecting the rules and ethics in the securities sector* which provides that KYC and suitability obligations apply without limitation as to the type of investment being sold.

Conclusion

The CSA will continue to monitor the issue and sale of PPNs, but we believe that the regulatory initiatives described above will substantially address the key concerns identified in CSA Notice 46-303. In particular:

- the proposed federal PPN regulations contemplate disclosure enhancements for PPNs issued by federal financial institutions, which comprise a majority of the PPN market;
- the proposal for changes to be made to the MFDA rules (as discussed above), along with existing IDA and CSF standards, to ensure that KYC and suitability requirements apply when MFDA, IDA and CSF member registrants (or their representatives) sell PPNs;
- the concerns associated with the sale of PPNs as a vehicle for selling alternative investment products to retail investors will be substantially addressed by the improved disclosure and sales practices that should result from the changes contemplated above;
- finally, proposed National Instrument 31-103 – *Registration Requirements* (NI 31-103) includes provisions dealing with referral arrangements and practices by registrants relating to investment products, which would include PPNs.[2]

Questions

If you have any questions, please refer them to any of the following:

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2 The CSA published NI 31-103 for comment on February 20, 2007. See Part 6 of NI 31-103.

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July 27, 2007

1.2 Notices of Hearing

1.2.1 Limelight Entertainment Inc. et al. - s. 127

IN THE MATTER OF
THE SECURITIES ACT
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
LIMELIGHT ENTERTAINMENT INC.,
CARLOS A. DA SILVA,
DAVID C. CAMPBELL,
JACOB MOORE AND
JOSEPH DANIELS

NOTICE OF HEARING
(Section 127)

TAKE NOTICE that the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to section 127 of the Securities Act (the "Act") at the Commission's offices on the 17th floor, 20 Queen Street West, Toronto, Ontario, commencing on August 2, 2007, at 10:00 a.m. or as soon thereafter as the hearing can be held.

AND TAKE NOTICE THAT the purpose of the Hearing is for the Commission to consider whether it is in the public interest to approve the settlement of the proceeding entered into between Staff of the Commission ("Staff") and the respondent Jacob Moore.

BY REASON OF the allegations set out in the Amended Statement of Allegations of Staff dated April 25, 2007 and such additional allegations as counsel may advise and the Commission may permit.

AND TAKE FURTHER NOTICE that any party to the proceeding may be represented by counsel if that party attends or submits evidence at the hearing.

AND TAKE FURTHER NOTICE THAT, upon failure of any party to attend at the time and place aforesaid, the hearing may proceed in the absence of that party and such party is not entitled to any further notice of the proceeding.

DATED at Toronto this 18th day of July, 2007

"Daisy Aranha"
Per: Secretary to the Commission

1.2.2 Shane Suman and Monie Rahman - ss. 127 and 127(1)

IN THE MATTER OF
THE SECURITIES ACT
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
SHANE SUMAN AND
MONIE RAHMAN

NOTICE OF HEARING
Sections 127 and 127(1)

TAKE NOTICE that the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to section 127 of the *Securities Act*, at its offices at 20 Queen Street West, 17th Floor Hearing Room on Tuesday, the 28th of August, 2007 at 10:00 a.m. or as soon thereafter as the hearing can be held.

TO CONSIDER whether, pursuant to s.127 and s.127(1) of the *Securities Act*, it is in the public interest for the Commission:

1. to make an order against Suman that:

   a. He be prohibited from becoming or acting as officer or director of an issuer, pursuant to paragraph 8 of s.127(1);

   b. Trading in any securities by him cease for such period as is specified by the Commission, pursuant to paragraph 2 of s.127(1);

   c. He be ordered to pay an administrative penalty of not more than $1,000,000 for his failure to comply with Ontario Securities law, pursuant to paragraph 9 of s.127(1);

   d. He disgorge any amounts obtained by him by virtue of his non-compliance with Ontario Securities law, pursuant to paragraph 10 of s.127(1);

   e. He be ordered to pay the costs of the Commission investigation and hearing, pursuant to s.127(1).

2. to make an order against Rahman that:

   a. She be prohibited from becoming or acting as officer or director of an issuer, pursuant to paragraph 8 of s.127(1);

   b. Trading in any securities by her cease for such period as is specified by the Commission, pursuant to paragraph 2 of s.127(1);

   c. She be ordered to pay the costs of the Commission investigation and hearing, pursuant to s.127(1).

3. to make such other orders as the Commission considers appropriate.

BY REASON OF the allegations set out in the Statement of Allegations dated July 24, 2007 and such additional allegations as counsel may advise and the Commission may permit;

AND TAKE FURTHER NOTICE that any party to the proceedings may be represented by counsel at the hearing;

AND TAKE FURTHER NOTICE that upon failure of any party to attend at the time and place aforesaid, the hearing may proceed in the absence of that party and such party is not entitled to any further notice of the proceeding.

DATED at Toronto this 24th day of July, 2007.

"John Stevenson"
Secretary to the Commission

1.4 Notices from the Office of the Secretary

1.4.1 Sterling Centrecorp Inc. et al.

FOR IMMEDIATE RELEASE
July 17, 2007

IN THE MATTER OF
THE SECURITIES ACT
R.S.O. 1990, C. S.5, AS AMENDED

- AND -

IN THE MATTER OF
STERLING CENTRECORP INC., AND
SCI ACQUISITION INC.

- AND -

IN THE MATTER OF
FIRST CAPITAL REALTY INC. AND
GAZIT CANADA INC.

TORONTO – Following a hearing held on May 17, 2007, to consider the Application of First Capital Realty Inc. and Gazit Canada Inc., and following an Order issued by the Commission on June 4, 2007, the Commission issued its Reasons and Decision in the above noted matter.

A copy of the Reasons and Decision is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
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SECRETARY

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For investor inquiries: OSC Contact Centre
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1-877-785-1555 (Toll Free)

1.4.2 Limelight Entertainment Inc. et al.

FOR IMMEDIATE RELEASE
July 18, 2007

IN THE MATTER OF
THE SECURITIES ACT
R.S.O. 1990, C. S.5, AS AMENDED

- AND -

IN THE MATTER OF
LIMELIGHT ENTERTAINMENT INC.,
CARLOS A. DA SILVA,
DAVID C. CAMPBELL,
JACOB MOORE AND
JOSEPH DANIELS

TORONTO – The Office of the Secretary issued a Notice of Hearing today to consider whether it is in the public interest to approve the settlement agreement entered between Staff and Jacob Moore on August 2, 2007 at 10:00 a.m.

A copy of the Notice of Hearing is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
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1-877-785-1555 (Toll Free)

1.4.3 Shane Suman and Monie Rahman

FOR IMMEDIATE RELEASE
July 24, 2007

IN THE MATTER OF
THE SECURITIES ACT
R.S.O. 1990, C. S.5, AS AMENDED

- AND -

SHANE SUMAN AND
MONIE RAHMAN

TORONTO – The Office of the Secretary issued a Notice of Hearing today, scheduling the hearing in the above named matter to commence on August 28, 2007 at 10:00 a.m.

A copy of the Notice of Hearing and Statement of Allegations are available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
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IN THE MATTER OF
THE SECURITIES ACT
R.S.O. 1990, C. S.5, AS AMENDED

AND

IN THE MATTER OF
SHANE SUMAN AND
MONIE RAHMAN

STATEMENT OF ALLEGATIONS OF THE
ONTARIO SECURITIES COMMISSION

Staff of the Ontario Securities Commission ("Commission") make the following allegations:

The Respondents

1. Shane Suman is a resident of Ontario and is a former employee of MDS Sciex (Sciex), a division of MDS Inc. (MDS). MDS is listed on the Toronto Stock Exchange and the New York Stock Exchange.

2. Monie Rahman is resident in the United States and is Suman's spouse. Rahman has an on-line securities trading account at E*Trade Canada Inc. ("E*Trade Account). Both Suman and Rahman have the E*Trade Account password and traded in securities using the account.

Overview

3. On January 29, 2007, MDS, publicly announced that it would be acquiring Molecular Devices Corporation ("MDCC"), a United States corporation listed on the NASDAQ (the "Announcement"). The Announcement confirmed that MDS planned to create a new business unit combining the business of MDCC with the business of Sciex.

4. Prior to the Announcement, the share price for MDCC (as at the close of January 26, 2007) was $23.88. At the close of business on January 29, 2007, the share price rose to $35.07, for an approximate increase in price of 46%. All amounts described herein, unless otherwise stated, are in US dollars.

5. The fact of MDS acquisition of MDCC was a material fact as defined by the *Securities Act*.

6. At the time of the Announcement, Suman was an employee in the IT department of Sciex and had access to the confidential email traffic of individuals (at both MDS and Sciex) who were in a special relationship with MDS and he had access to material, non-public, information about the Announcement.

7. Suman became aware of the Announcement in the course of his employment, before there was a general public disclosure by MDS. He conveyed the substance of the material non-public information respecting the acquisition, later described in the Announcement, to his wife, Rahman.

8. In the days immediately prior to the Announcement, 900 option contracts and 12,000 shares of MDCC were purchased by Suman and Rahman in the E*Trade account. Suman and Rahman had online/internet access to place trades in the Account via a shared password.

Knowledge of Suman of the Material Information

9. During the due diligence process, prior to the MDS decision described in the Announcement, MDS executives (and others within MDS and Sciex who were participating in the project's due diligence process) were given access to a secure electronic data room. This data room was an electronic repository for documents related to the due diligence activities of entities interested in acquiring MDCC. Any time information was added to the data room, an email notification was sent out to a predetermined email list, which included MDS and Sciex employees.

10. During the operation of the data room a significant number of notification emails were sent to the mailing list. Each notification email showed the sender to be Molecular Devices. In addition, the subject line for a number of the emails contained the words "Monument", which was the project name assigned to the potential acquisition of MDCC by MDS ("Project Monument"). The nature of the project was strictly confidential and was not communicated to any MDS or Sciex employees, other than those who were involved in the potential acquisition of MDCC and in due diligence sessions leading up to the Announcement. Suman was not a member of Project Monument.

11. Within the IT department at Sciex, Suman was responsible for overseeing the unsolicited bulk email (or "spam") filter system. In this capacity, Suman had access to a queue of emails entering the Sciex email system. This queue of emails included emails originating from the data room and emails containing Monument in the subject line and Molecular Devices in the sent line, which identifiers were visible to Suman.

Chronology of Key Events in Advance of the Subject Tipping and Trading

12. i) November, 2006

- MDS begins to consider a takeover of Molecular.
- Suman became a full-time employee at MDS/Sciex after working as a contract employee for approximately three years. His areas of responsibility included email administration and high-level help desk /support functions.

ii) Sunday, January 21, 2007

- After approximately one month of negotiations, an agreement is reached for MDS to acquire MDCC. The acquisition was approved by the MDS board on Sunday, January 21, 2007. The Announcement and the timeline for closing the transaction was set out in an email dated that day confirming the acquisition.

iii) Monday, January 22, 2007

- The Sciex Communications Officer began to draft a confidential public release relating to the Announcement.

iv) Tuesday, January 23, 2007

- The Sciex communications officer's computer crashed, and the confidential press release relating to the Announcement was lost to her. The Officer sought assistance from Sciex IT staff to recover the document. Sometime late that morning, Suman attempted, unsuccessfully, to recover the letter. Suman was provided with the electronic file name, "andy monument message," and told that, it was urgent the file be recovered. He was told that it was so sensitive that he could not view the document once it was recovered.
- Beginning at 1:57 pm Suman queried the stock symbol "mddc"[1] followed immediately by a query for "monument inc." At 2:00 pm Suman began searching on-line for information relating to Molecular. He viewed this information on-line until approximately 2:29 pm.
- At 6:57 Suman again called up stock market information on-line for Molecular and again searched for information on Monument Inc. At 7:29 he reviewed a 5-day stock chart for MDCC.
- Suman contacted his wife, Rahman, in Utah, at 7:40 pm and they spoke for approximately 100 minutes.

1 "mddc" is not known to be a currently used stock symbol however "mdcc" *is* the stock-symbol for Molecular Devices.

The Purchase of MDCC Call Option Contracts and Shares

13. At approximately 9:34 a.m. on Wednesday, January 24, 2007, Rahman and Suman began purchasing shares and options in MDCC.

14. On January 24, 2007 12,000 MDCC shares and 340 call option contracts were purchased online in the E*Trade Account. On January 25, 260 call option contracts were purchased online in the E*Trade Account. On January 26, a further 300 call option contracts were purchased online in the E*Trade Account.

15. The transactions in the Account were carried out using internet access. The trades made by Suman were made using a computer located at Sciex.

Profit Made

16. The Respondent's personal assets and liabilities in their E*Trade brokerage accounts at the time immediately prior to making the trades was approximately $182,310 (USD) and $48,000 (CAN). They also had approximately $20,000 (CAN) in available cash.

17. The total cost of the option contracts purchased by the Respondents in the Account was $103,524. The total cost of the shares purchased by the Respondents was $287,759.

18. The MDCC securities in the account were liquidated by March 16, 2007, for a profit of $954,938.

Breach of Act and Conduct Contrary to the Public Interest

19. The Respondent Suman, as an employee of MDS was a person in a special relationship with MDS in accordance with s.76(5) of the *Act* at the time of the subject trading and at the time of the Announcement.

20. The Respondent Suman:

a) Traded in the securities of MDCC (a US issuer) with knowledge of material undisclosed information respecting it (being the acquisition of MDCC by MDS), thereby acting contrary to the public interest;

b) Advised his wife, Rahman, of the proposed acquisition of MDCC by MDS, thereby breaching s.76(2) of the *Act* which prohibits the informing of another person (unless in the necessary course of business) of a material fact in respect of a reporting issuer before that material fact has been generally disclosed, and also thereby acted contrary to the public interest.

21. The Respondent Rahman traded in MDCC securities with the knowledge of a material undisclosed fact, being the acquisition of MDCC by MDS, having acquired the knowledge from her husband (known by her to be an employee of MDS) and thereby acted contrary to the public interest.

22. Such additional allegations as Staff may advise and the Commission may permit.

DATED at Toronto this 24th day of July, 2007.

1.4.4 Momentas Corporation et al.

FOR IMMEDIATE RELEASE
July 24, 2007

IN THE MATTER OF
THE SECURITIES ACT
R.S.O. 1990, C. S.5, AS AMENDED

- AND -

IN THE MATTER OF
MOMENTAS CORPORATION,
HOWARD RASH,
ALEXANDER FUNT,
SUZANNE MORRISON AND
MALCOLM ROGERS

TORONTO – Following the release of the Reasons and Decision on Sanctions and Costs on July 12, 2007, the Commission issued an Order regarding Sanctions and Costs in the above noted matter yesterday.

A copy of the Reasons and Decision on Sanctions and Costs and the Order is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

For media inquiries: Wendy Dey
Director, Communications
and Public Affairs
416-593-8120

Laurie Gillett
Manager, Public Affairs
416-595-8913

For investor inquiries: OSC Contact Centre
416-593-8314
1-877-785-1555 (Toll Free)

1.4.5 Jan S. Michalik

FOR IMMEDIATE RELEASE
July 24, 2007

IN THE MATTER OF
THE SECURITIES ACT
R.S.O. 1990, C. S.5, AS AMENDED

- AND -

IN THE MATTER OF
JAN S. MICHALIK, APPLICATION FOR
REGISTRATION OF TEZNIA FINANCIAL CORP.
AS AN INVESTMENT COUNSEL AND
PORTFOLIO MANAGER (ICPM) AND
JAN S. MICHALIK'S REGISTRATION
AS AN ADVISING OFFICER

TORONTO – Following a hearing held on June 19, 2007, the Commission issued its Reasons and Decision in the above noted matter.

A copy of the Reasons and Decision is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
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SECRETARY

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Dofasco Inc. - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Issuer has one security holder – Issuer is not a reporting issuer or the equivalent under applicable securities laws

Applicable Legislative Provisions

Securities Act , R.S.O. 1990, c. S.5, as am., s. 1(10)(b).

July 18, 2007

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ALBERTA, SASKATCHEWAN, MANITOBA,
ONTARIO, QUÉBEC, NOVA SCOTIA AND
NEWFOUNDLAND AND LABRADOR
(the Jurisdictions)

AND

IN THE MATTER OF
THE MUTUAL RELIANCE REVIEW SYSTEM
FOR EXEMPTIVE RELIEF APPLICATIONS

AND

IN THE MATTER OF
DOFASCO INC.
(the Applicant)

MRRS DECISION DOCUMENT

Background

The local securities regulatory authority or regulator (the **Decision Maker**) in each of the Jurisdictions has received an application from the Applicant for a decision under the securities legislation of the Jurisdictions (the **Legislation**) that the Applicant is not a reporting issuer in all of the Jurisdictions (the **Requested Relief**).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

(a) the Ontario Securities Commission is the principal regulator for this application; and

(b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

Representations

The decision is based on the following facts represented by the Applicant:

1. The Applicant is a reporting issuer or its equivalent in each of the Jurisdictions.

2. The Applicant's authorized capital consists of:

   (a) common shares (**Common Shares**) of which 78,708,481 are issued and outstanding; and

   (b) preferred shares of which none are issued and outstanding.

3. On May 15, 2007, the Applicant completed the redemption of all of its issued and outstanding 7.55% notes due 2008 and all of its issued and outstanding 4.961% notes due 2017 (collectively, the **Notes**).

4. All of the Common Shares are owned by 4313267 Canada Inc. (**4313267**) and have been since April 5, 2006. There are no other issued and outstanding securities of the Applicant.

5. Effective March 31, 2006, the Applicant's Common Shares were de-listed from the Toronto Stock Exchange and are not listed on any other exchange.

6. The outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by less than 15 security holders in each of the Jurisdictions and less than 51 security holders in total in Canada.

7. No securities of the Applicant are traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation*.

8. The Applicant has no current intention to seek public financing by way of an offering of securities.

9. The Applicant is applying for relief not to be a reporting issuer in all of the jurisdictions in Canada in which it is currently a reporting issuer.

10. The Applicant is not in default of any of its obligations under applicable securities legislation of the Jurisdictions except as follows:

    (a) following the resignation of the last of its independent directors on April 13, 2007, the Applicant currently does not have an audit committee as required by Multilateral Instrument 52-110 - *Audit Committees* ("**MI 52-110**");

    (b) the Applicant did not include the disclosure required by Section 6.2 of MI 52-110 in its annual Management Discussion and Analysis for 2006 as required pursuant to Section 6.2(2) of MI 52-110; and

    (c) the Applicant has not filed its interim financial statements for the period ending March 31, 2007 and the Management Discussion and Analysis for such financial statements under National Instrument 51-102 - *Continuous Disclosure Requirements* and the related certification for such financial statements under Multilateral Instrument 52-109 - *Certification of Disclosure in Issuers Annual and Interim Filings*.

11. The Applicant is in default of its continuous disclosure obligations for the following reasons:

    (a) the failure to include the disclosure required by Section 6.2 of MI 52-110 in the Applicant's Annual Management Discussion and Analysis for 2006 was inadvertent as the Applicant intended to include the disclosure in its Annual Information Form but subsequently determined that it was not required to file an Annual Information Form as the Applicant has become a venture issuer; and

    (b) the Applicant has not filed interim financial statements for the period ending March 31, 2007 and the related Management Discussion and Analysis and certification on the basis that such documents were required to be filed by May 30, 2007, by which time the Applicant had a single security holder and had submitted the application for the Requested Relief.

12. During the period in which the Applicant was in default of MI 52-110, other than the interim financial statements referred to in paragraph 10(c), the Applicant was not required to issue financial information nor did the Applicant issue financial information that was misleading.

13. During the period in which the Applicant was in default of MI 52-110, the Applicant did not receive any complaints or submissions under the procedures required to be established by the audit committee under subsection 2.3(7) of MI 52-110.

14. Upon the grant of the Requested Relief, the Applicant will not be a reporting issuer or its equivalent in any jurisdiction in Canada.

Decision

Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met and it is the decision of the Decision Makers that the Requested Relief is granted.

"Carol S. Perry"

"Margot C. Howard"

2.1.2 Sterling Centrecorp Inc. - s. 1(10)

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – application for an order that the issuer is not a reporting issuer.

Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(10).

July 19, 2007

Fogler, Rubinoff LLP
1200 – 95 Wellington Street West
Toronto-Dominion Centre
Toronto, Ontario M5J 2Z9

Attention: Eric Roblin

Dear Sirs:

Re: Sterling Centrecorp Inc. (the "Applicant") – Application to Cease to be a Reporting Issuer under the Securities Legislation of Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, New Brunswick and Newfoundland and Labrador (collectively, the "Jurisdictions")

The Applicant has applied to the local securities regulatory authority or regulator (the "**Decision Maker**") in each of the Jurisdictions for a decision under the securities legislation (the "**Legislation**") of the Jurisdictions to not to be a reporting issuer in the Jurisdictions.

As the Applicant has represented to the Decision Makers that:

1. the outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by less than 15 security holders in each of the jurisdictions in Canada and less than 51 security holders in total in Canada;

2. no securities of the Applicant are traded on a marketplace as defined in National Instrument 21-101 – *Marketplace Operation*;

3. the Applicant is applying for relief to cease to be a reporting issuer in all of the jurisdictions in Canada in which it is currently a reporting issuer; and

4. the Applicant is not in default of any of its obligations under the Legislation as a reporting issuer,

each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met and orders that the Applicant is not a reporting issuer.

"Erez Blumberger"
Manager, Corporate Finance
Ontario Securities Commission

2.1.3 Custom Direct Income Fund - s. 1(10)b

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – application for an order that the issuer is not a reporting issuer.

Ontario Statutes

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(10)b.

July 19 , 2007

Torys LLP
Suite 3000
79 Wellington Street West
Box 270, TD Centre
Toronto, Ontario
M5K 1N2

Attention: Victoria Blond

Dear Sirs/Mesdames:

Re: Custom Direct Income Fund (the "Applicant") — application for an order not be a reporting issuer under the securities legislation of Ontario, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia and Newfoundland and Labrador (the "Jurisdictions")

The Applicant has applied to the local securities authority or regulator (the "Decision Maker") in each of the Jurisdictions for a decision under the securities legislation (the "Legislation") of the Jurisdictions not to be a reporting issuer in the Jurisdictions.

As the applicant has represented to the Decision Makers that,

(i) the outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by less than 15 security holders in each of the jurisdictions in Canada and less than 51 security holders in total in Canada;

(ii) no securities of the Applicant are traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation*;

(iii) the Applicant is applying for relief to cease to be a reporting issuer in all of the jurisdictions in Canada in which it is currently a reporting issuer; and

(iv) the Applicant is not in default of any of its obligations under the Legislation as a reporting issuer,

each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met and orders that the Applicant is not a reporting issuer.

"Jo-Anne Matear"
Assistant Manager, Corporate Finance
Ontario Securities Commission

2.1.4 Philips Electronics Ltd. - s. 1(10)b

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – application for an order that the issuer is not a reporting issuer.

Ontario Statutes

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(10)b.

July 19, 2007

Blake, Cassels & Graydon LLP
595 Burrard Street, Suite 2600
Vancouver, BC V7X 1L3

Attention: James Chen

Dear Sirs / Mesdames:

Re: Philips Electronics Ltd. (the "Applicant") - application for an order not to be a reporting issuer under the securities legislation of Ontario, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia and Newfoundland and Labrador (the "Jurisdictions")

The Applicant has applied to the local securities regulatory authority or regulator (the "**Decision Maker**") in each of the Jurisdictions for a decision under the securities legislation (the "**Legislation**") of the Jurisdictions not to be a reporting issuer in the Jurisdictions.

As the Applicant has represented to the Decision Makers that:

1. the outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by less than 15 security holders in each of the jurisdictions in Canada and less than 51 security holders in total in Canada;

2. no securities of the Applicant are traded on a marketplace as defined in National Instrument 21-101 – *Marketplace Operation*;

3. the Applicant is applying for relief not to be a reporting issuer in all of the jurisdictions in Canada in which it is currently a reporting issuer; and

4. the Applicant is not in default of any obligations under the Legislation as a reporting issuer,

each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met and orders that the Applicant is not a reporting issuer.

"Jo-Anne Matear"
Assistant Manager, Corporate Finance
Ontario Securities Commission

2.1.5 Tenke Mining Corp. - s. 1(10)

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – application for an order that the issuer is not a reporting issuer.

Ontario Statutes

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(10).

July 23, 2007

McCullough O'Connor Irwin LLP
1100 - 888 Dunsmuir Street
Vancouver, BC V6C 3K4

Attention: Raman Gill

Dear Sir:

Re: Tenke Mining Corp.(the Applicant) - Application to Cease to be a Reporting Issuer under the securities legislation of Alberta, Saskatchewan, Ontario and Québec (the Jurisdictions)

The Applicant has applied to the local securities regulatory authority or regulator (the **Decision Maker**) in each of the Jurisdictions for a decision under the securities legislation (the **Legislation**) of the Jurisdictions to be deemed to have ceased to be a reporting issuer in the Jurisdictions.

As the Applicant has represented to the Decision Makers that:

1. the outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by less than 15 security holders in each of the jurisdictions in Canada and less than 51 security holders in total in Canada;

2. no securities of the Applicant are traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation*;

3. the Applicant is applying for relief to cease to be a reporting issuer in all of the jurisdictions in Canada in which it is currently a reporting issuer; and

4. the Applicant is not in default of any of its obligations under the Legislation as a reporting issuer,

each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met and orders that the Applicant is deemed to have ceased to be a reporting issuer in the Jurisdictions.

Relief requested granted on the 23 day of July, 2007.

"Blaine Young"
Associate Director, Corporate Finance
Alberta Securities Commission

2.1.6 AIC American Focused Fund - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – mutual funds granted relief from 10% concentration restriction in subsection 2.1(1) of National Instrument 81-102 Mutual Funds in connection with the acquisition by certain of the mutual funds to acquire shares of MGIC Investment Corporation in exchange for the shares those mutual funds presently held in Radian Group Inc. as a result of a merger – the mutual funds will hold securities in the merged entity in essentially the same amounts as they held in common shares of Radian Group Inc.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, s. 2.1(1).

July 19, 2007

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA,
ONTARIO, QUEBEC, NEW BRUNSWICK, NOVA SCOTIA,
PRINCE EDWARD ISLAND, NEWFOUNDLAND AND LABRADOR,
NORTHWEST TERRITORIES, YUKON TERRITORY AND NUNAVUT
(the Jurisdictions)

AND

IN THE MATTER OF
THE MUTUAL RELIANCE REVIEW SYSTEM
FOR EXEMPTIVE RELIEF APPLICATIONS

AND

IN THE MATTER OF
AIC AMERICAN FOCUSED FUND,
AIC AMERICAN FOCUSED CORPORATE CLASS,
AIC CANADIAN FOCUSED FUND,
AIC CANADIAN FOCUSED CORPORATE CLASS,
AIC CANADIAN BALANCED FUND,
AIC CANADIAN BALANCED CORPORATE CLASS
AND AIC DIVIDEND INCOME FUND
(collectively, the Specified AIC Funds),
AIC LIMITED AND AIC INVESTMENT SERVICES INC.
(collectively, the Filer)

MRRS DECISION DOCUMENT

Background

The local securities regulatory authority or regulator (the **Decision Maker**) in each of the Jurisdictions has received an application from the Filer for a decision under section 19.1 of National Instrument 81-102 *Mutual Funds* (**NI 81-102** or the **Legislation**) that the Filer be exempt from the issuer concentration restriction contained in subsection 2.1(1) of NI 81-102 in connection with the acquisition by certain of the Funds (defined below) of shares of MGIC Investment Corporation in exchange for the shares those Funds presently hold in Radian Group Inc., pursuant to the Merger (defined below) described in this Decision Document (the **Requested Relief**).

Under the Mutual Reliance Review System for Exemptive Relief Applications (**MRRS**):

(a) The Ontario Securities Commission is the principal regulator for this application, and

(b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

Defined terms contained in National Instrument 14-101 *Definitions* and in NI 81-102 have the same meanings in this decision unless they are otherwise defined in this decision.

(a) MGIC means MGIC Investment Corporation, a U.S. company with its common stock listed on the New York Stock Exchange.

(b) Radian means Radian Group Inc., a U.S. company with its common stock listed on the New York Stock Exchange.

(c) Merger means the proposed merger of MGIC with Radian to form MGIC Radian Financial Group Inc., announced in February 2007.

(d) Funds means the Specified AIC Funds and any other AIC Fund that may hold Radian common shares immediately prior to the Merger.

Representations

This decision is based on the following facts represented by the Filer:

1. AIC Limited acts as the manager and trustee (the **Manager or AIC**) of, and AIC Investment Services Inc. acts as the portfolio adviser (the **Portfolio Adviser**) of, the AIC Funds. The AIC Funds are distributed under simplified prospectuses and annual information forms in all provinces and territories of Canada. The Portfolio Adviser is an affiliate of AIC Limited and is registered with the Ontario Securities Commission and other provincial regulators, as applicable, as an adviser in the category of investment counsel and portfolio manager. The principal offices of the Manager and the Portfolio Adviser are located in Burlington, Ontario.

2. The Specified AIC Funds presently hold securities in Radian. On February 6, 2007, Radian and MGIC announced the Merger, which was approved by the shareholders of both companies at meetings held on May 9 and 10, 2007. In the Merger, Radian shareholders will receive 0.9658 shares of MGIC common shares for each Radian common share held immediately prior to the Merger. The Merger is expected to be completed late in the third quarter or early in the fourth quarter of 2007 pending all remaining regulatory approvals.

3. The following table indicates for each Specified AIC Fund as of May 31, 2007: (i) the number of Radian common stock held, (ii) the percentage of net assets that stock represented as of that date, (iii) the number of MGIC common shares each Specified AIC Fund would have received if the Merger had been completed on that date and (iv) the percentage of assets of each Specified AIC Fund those MGIC common shares would have represented if the Merger had been completed on that date.

Specified AIC Fund	**Radian common shares held**	**Percentage of assets held in Radian common shares**	**MGIC common shares (if Merger had been completed on May 31, 2007)**	**Percentage of assets held in MGIC common shares (if Merger had been completed on May 31, 2007)** *MGIC market price as of May 31 can be expected to adjust to account for the Merger so that it will be consistent with Radian market price*
AIC American Focused Fund	1,608,745	11.6	1,553,726	11.7
AIC American Focused Corporate Class	201,897	11.2	194,992	11.3
AIC Canadian Focused Fund	1,309,900	10.4	1,265,101	10.6
AIC Canadian Focused Corporate Class	144,385	10.0	139,447	10.2
AIC Canadian Balanced Fund	304,820	8.3	294,395	8.4
AIC Canadian Balanced Corporate Class	34,985	8.3	33,789	8.4
AIC Dividend Income Fund	240,787	4.7	232,552	4.8

4. The Radian common shares presently held by each Specified AIC Fund were acquired in full compliance with section 2.1(1) of NI 81-102. The 10 percent concentration restriction prescribed by section 2.1(1) was not breached at the time of purchase of the Radian common shares by any Specified AIC Fund. Those Specified AIC Funds currently holding in excess of 10 percent of their net assets in Radian common shares, exceeded that threshold passively and not through additional purchases of Radian common shares.

5. On behalf of the Specified AIC Funds, AIC voted in favour of Radian completing the Merger, given AIC's belief that the Merger would be in the best interests of the Specified AIC Funds and that the exchange ratio in the Merger was fair and reasonable to the Specified AIC Funds. In AIC's opinion, it was in the best interests for AIC to vote the common shares of Radian held by the Specified AIC Funds, given the benefits inherent in the Merger to the Specified AIC Funds. AIC was of the view that it would not be in the best interests of the Specified AIC Funds to vote against the Merger or abstain from voting.

6. Section 2.1(1) of NI 81-102 prohibits a mutual fund from purchasing a security of an issuer if, immediately after the transaction, more than 10 percent of the net assets of the mutual fund, taken at market value at the time of the transaction, would be invested in securities of any issuer. The word "purchase" is defined in section 1.1 of NI 81-102 as meaning "in connection with an acquisition of a portfolio asset by a mutual fund, an acquisition that is the result of a decision made and action taken by the mutual fund". Paragraph 2.13(2)3 of the Companion Policy to NI 81-102 suggests that, generally, where a mutual fund receives a security as a result of a merger for which the mutual fund voted in favour, then that acquisition would constitute a "purchase".

7. Without the Requested Relief, the Funds would be considered to have "purchased" the MGIC common shares they will acquire as a result of the Merger and the Funds may be in breach of section 2.1(1) since they might, as a result of the Merger, acquire MGIC common shares in excess of the 10 percent concentration restriction.

8. AIC does not believe that it is in the best interests of the Funds to divest of the Radian common shares held by each Fund in order to be within the 10 percent threshold of section 2.1(1) of NI 81-102 after the Merger.

9. The Funds will hold securities in the merged Radian-MGIC entity in essentially the same amounts as they will hold in common shares of Radian immediately before the Merger. Thus, the Funds will have no more economic exposure to the merged Radian-MGIC entity immediately after the Merger than it did to Radian immediately before the Merger.

10. No Fund will make any further purchase of the securities of the merged Radian-MGIC entity after the Merger for as long as its exposure to securities in the merged Radian-MGIC entity remain above 10 percent of net assets.

11. The Filer is applying for the Requested Relief for all of the Funds, given that the Merger will not take place until later in 2007 and it is not possible to definitively state which Funds will be in breach of section 2.1(1) of NI 81-102 until immediately after the Merger.

Decision

Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met.

The decision of the Decision Makers under the Legislation is that the Requested Relief is granted.

"Leslie Byberg"
Manager, Investment Funds Branch
Ontario Securities Commission

2.1.7 CI Investments Inc. - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – mutual funds are permitted to calculate and disclose equity interests on the basis that all specified securities of certain members of the organization of the mutual funds have been exchanged, in accordance with their terms – each participating dealer, associate, or representative of a participating dealer or associate, is permitted to calculate and disclose of their respective equity interests in certain members of the organization of the mutual funds on the basis that all specified securities of such members of the organization of the mutual funds have been exchanged

Applicable Legislative Provisions

National Instrument 81-105 Mutual Fund Sales Practices, ss. 8.2(1)(b), 8.2(1)(c), 8.2(2), 8.2(3), 8.2(4) and 8.3.

July 20, 2007

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO, QUÉBEC, NEW BRUNSWICK, NOVA SCOTIA, PRINCE EDWARD ISLAND, NEWFOUNDLAND AND LABRADOR, NORTHWEST TERRITORIES, YUKON AND NUNAVUT
(the Jurisdictions)

AND

IN THE MATTER OF
THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS

AND

IN THE MATTER OF
THE MUTUAL FUNDS LISTED IN APPENDIX "A" HERETO
(the Current Funds)

AND

IN THE MATTER OF
CI INVESTMENTS INC., UNITED FINANCIAL CORPORATION AND LAKEVIEW ASSET MANAGEMENT INC.
(the Filers)

MRRS DECISION DOCUMENT

Background

The local securities regulatory authority or regulator (the **Decision Maker**) in each of the Jurisdictions has received an application on behalf of the Filers for a decision under Section 9.1 of National Instrument 81-105 - *Mutual Fund Sales Practices* (the **Legislation**) that:

(a) for purposes of sections 8.2(1)(b), 8.2(1)(c), 8.2(2) and 8.3 of the Legislation, each Fund (as defined below) is permitted to calculate and disclose the equity interests in CI Financial Income Fund (the **Trust**) and Canadian International LP (**CI LP**) as if all of the Class B limited partnership units (the Class B Units) of CI LP and all the special voting units (the **Special Units**) of the Trust have been exchanged, in accordance with their terms, for trust units of the Trust; and

(b) for purposes of sections 8.2(3) and 8.2(4) of the Legislation, each Distribution Person (as defined below) is permitted to calculate and disclose their respective equity interests in the Trust and CI LP as if all of the Class B Units and Special Units have been exchanged, in accordance with their terms, for trust units of the Trust.

collectively, the **Requested Relief**.

Under the Mutual Reliance Review System for Exemptive Relief Applications (**MRRS**):

(a) the Ontario Securities Commission is the principal regulator for this application; and

(b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

Defined terms contained in National Instrument 14-101 - *Definitions* have the same meaning in this decision unless they are defined in this decision.

Representations

This decision is based on the following facts represented by the Filers:

1. Each Filer is the "manager" within the meaning of National Instrument 81-102 - *Mutual Funds* (**NI 81-102**) of the Canadian securities administrators of one or more Current Funds. The head offices of the Filers are located in Toronto, Ontario.

2. The Filers, and present or future affiliates of the Filers, may become the manager of additional mutual funds (the **Future Funds** and, together with the Current Funds, the **Funds**).

3. Each Current Fund is, and each Future Fund will be, regulated by NI 81-102.

4. Prior to June 30, 2006, two Filers were direct or indirect wholly-owned subsidiaries of CI Financial Inc., an Ontario corporation, the shares of which were listed on the Toronto Stock Exchange (the **TSX**). Consequently, CI Financial Inc. was

considered under Legislation to be "a member of the organization" of each Current Fund then managed by such Filers.

5. Given the size of the public float for shares of CI Financial Inc. and its position in the marketplace, it is a virtual certainty that, immediately prior to June 30, 2006, some shares of CI Financial Inc. were owned by:

   (a) registered dealers in Canada that are considered to be participating dealers for the Funds;

   (b) associates of the participating dealers referred to above;

   (c) representatives of the participating dealers referred to above; and

   (d) associates of the representatives referred to above,

   collectively, **Distribution Persons**.

6. However, since CI Financial Inc. was a reporting issuer and its shares were traded on the TSX, there was no obligation for:

   (a) the Current Funds to disclose in their prospectuses or simplified prospectuses; or

   (b) Distribution Persons to disclose to their clients,

   the information contemplated by section 8.2 of the Legislation since such share ownership by Distribution Persons would not have constituted 10% or more of any class of voting or equity securities of CI Financial Inc.

7. On June 30, 2006, CI Financial Inc. completed a plan of arrangement pursuant to which CI Financial Inc. converted itself into an income trust structure (the **Conversion**). As a result of the Conversion, CI Financial Inc. became the Trust and CI LP was placed in the ownership structure below the Trust.

8. In addition to its class of voting, participating trust units which are traded on the TSX, the Trust also has issued the Special Units which are voting, non-participating securities that are non-transferable and not traded on any stock exchange.

9. The Trust owns all of the voting, participating Class A limited partner units (the **Class A Units**) of CI LP. The Trust also wholly-owns CI Financial General Partner Corp., which is the general partner of CI LP. CI LP, in turn, directly or indirectly wholly-owns each Filer.

10. CI LP also has issued the Class B Units, which are non-voting, participating limited partner units.

11. The combination of one Class B Unit and one Special Unit constitute the economic equivalent to the holder thereof of owning one trust unit of the Trust. A combination of one Class B Unit and one Special Unit, together, also are exchangeable for one trust unit of the Trust.

12. The Trust's ownership of all of the outstanding Class A Units represents 100% of the outstanding voting securities and approximately 47.9% of the total outstanding equity securities of CI LP and, indirectly, each Filer. The Class B Units are owned by a variety of securityholders.

13. As part of the steps of the Conversion, shareholders of CI Financial Inc. were given the option to either:

   (a) become unitholders of the Trust; or

   (b) elect to become limited partners of CI LP.

   As a result, the Conversion had the effect of splitting the ownership structure of CI Financial Inc. whereby some former shareholders became unitholders of the Trust, while other former shareholders became holders (**Class B Unitholders**) of a combination of Class B Units and Special Units.

14. Notwithstanding the split in ownership described above, the terms of the Class A Units owned by the Trust and the Class B Units and Special Units owned by the Class B Unitholders effectively result in the same voting and equity participation as if all the limited partners of CI LP are holders of trust units of the Trust.

15. It can reasonably be expected that some Distribution Persons who owned shares of CI Financial Inc. immediately prior to the Conversion elected to become Class B Unitholders. Though CI LP is a reporting issuer under Canadian securities legislation, its securities are not listed on any Canadian stock exchange, nor are they expected to become so listed. The ownership of any Class B Units by any Distributing Person is an equity interest since there is no 10% threshold to constitute an equity interest in securities which are not listed on a Canadian stock exchange.

16. The Filers are unable to comply with section 8.2 of the Legislation since the Filers do not know the extent to which Distribution Persons are Class B Unitholders.

Decision

Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision

Maker with the jurisdiction to make the decision has been met.

The decision of the Decision Makers under the Legislation is that the Requested Relief is granted.

"James E. A. Turner"
Vice-Chair
Ontario Securities Commission

"Paul K. Bates"
Commissioner
Ontario Securities Commission

Appendix "A"

CI American Equity Fund
CI American Equity Corporate Class
CI Alpine Growth Equity Fund
CI American Managers® Corporate Class
CI American Small Companies Fund
CI American Small Companies Corporate Class
CI American Value Fund
CI American Value Corporate Class
CI Can-Am Small Cap Corporate Class
CI Canadian Investment Fund
CI Canadian Investment Corporate Class
CI Canadian Small/Mid Cap Fund
CI Emerging Markets Fund
CI Emerging Markets Corporate Class
CI European Fund
CI European Corporate Class
CI Global Fund
CI Global Corporate Class
CI Global Biotechnology Corporate Class
CI Global Consumer Products Corporate Class
CI Global Energy Corporate Class
CI Global Financial Services Corporate Class
CI Global Health Sciences Corporate Class
CI Global High Dividend Advantage Fund
CI Global High Dividend Advantage Corporate Class
CI Global Managers® Corporate Class
CI Global Small Companies Fund
CI Global Small Companies Corporate Class
CI Global Science & Technology Corporate Class
CI Global Value Fund
CI Global Value Corporate Class
CI International Fund
CI International Corporate Class
CI International Value Fund
CI International Value Corporate Class
CI Japanese Corporate Class
CI Pacific Fund
CI Pacific Corporate Class
CI Value Trust Corporate Class
Harbour Fund
Harbour Corporate Class
Harbour Foreign Equity Corporate Class
Signature Canadian Resource Fund
Signature Canadian Resource Corporate Class
Signature Select Canadian Fund
Signature Select Canadian Corporate Class
Synergy American Fund
Synergy American Corporate Class
Synergy Canadian Corporate Class
Synergy Canadian Style Management Corporate Class
Synergy Focus Canadian Equity Fund
Synergy Focus Global Equity Fund
Synergy Global Corporate Class
Synergy Global Style Management Corporate Class
CI Canadian Asset Allocation Fund
CI Global Balanced Corporate Class
CI International Balanced Fund
CI International Balanced Corporate Class
Harbour Foreign Growth & Income Corporate Class
Harbour Growth & Income Fund
Harbour Growth & Income Corporate Class

Signature Canadian Balanced Fund
Signature Global Income & Growth Fund
Signature Global Income & Growth Corporate Class
Signature Income & Growth Fund
Signature Income & Growth Corporate Class
Synergy Tactical Asset Allocation Fund
CI Canadian Bond Fund
CI Canadian Bond Corporate Class
CI Short-Term Bond Fund
CI Long-Term Bond Fund
CI Money Market Fund
CI US Money Market Fund
CI Short-Term Corporate Class
CI Short-Term US$ Corporate Class
CI Global Bond Fund
CI Global Bond Corporate Class
CI Mortgage Fund
Signature Corporate Bond Fund
Signature Corporate Bond Corporate Class
Signature Dividend Fund
Signature Dividend Corporate Class
Signature High Income Fund
Signature High Income Corporate Class
Portfolio Series Income Fund
Portfolio Series Conservative Fund
Portfolio Series Balanced Fund
Portfolio Series Conservative Balanced Fund
Portfolio Series Balanced Growth Fund
Portfolio Series Growth Fund
Portfolio Series Maximum Growth Fund
Select 100i Managed Portfolio Corporate Class
Select 80i20e Managed Portfolio Corporate Class
Select 70i30e Managed Portfolio Corporate Class
Select 60i40e Managed Portfolio Corporate Class
Select 50i50e Managed Portfolio Corporate Class
Select 40i60e Managed Portfolio Corporate Class
Select 30i70e Managed Portfolio Corporate Class
Select 20i80e Managed Portfolio Corporate Class
Select 100e Managed Portfolio Corporate Class
Select Income Managed Fund
Select Canadian Equity Managed Fund
Select U.S. Equity Managed Fund
Select International Equity Managed Fund
Select Income Managed Corporate Class
Select Canadian Equity Managed Corporate Class
Select U.S. Equity Managed Corporate Class
Select International Equity Managed Corporate Class
Select Staging Fund
Knight Bain Pure Canadian Equity Fund
Knight Bain Small Cap Fund
Knight Bain Diversified Monthly Income Fund
Knight Bain Corporate Bond Fund
Knight Bain Canadian Bond Fund
Cash Management Pool
Short Term Income Pool
Canadian Fixed Income Pool
Global Fixed Income Pool
Enhanced Income Pool
Canadian Equity Small Cap Pool
Canadian Equity Value Pool
Canadian Equity Growth Pool
Canadian Equity Diversified Pool
US Equity Value Pool
US Equity Growth Pool
US Equity Diversified Pool
US Equity Small Cap Pool
International Equity Value Pool
International Equity Growth Pool
International Equity Diversified Pool
Emerging Markets Equity Pool
Real Estate Investment Pool
Artisan Canadian T-Bill Portfolio
Artisan Most Conservative Portfolio
Artisan Conservative Portfolio
Artisan Moderate Portfolio
Artisan Growth Portfolio
Artisan High Growth Portfolio
Artisan Maximum Growth Portfolio
Artisan New Economy Portfolio
Institutional Managed Income Pool
Institutional Managed Canadian Equity Pool
Institutional Managed US Equity Pool
Institutional Managed International Equity Pool
Lakeview Disciplined Leadership Canadian Equity Fund
Lakeview Disciplined Leadership U.S. Equity Fund
Lakeview Disciplined Leadership High Income Fund

2.2 Orders

2.2.1 Momentas Corporation et al.

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990 c. S.5, AS AMENDED

- AND -

IN THE MATTER OF
MOMENTAS CORPORATION,
HOWARD RASH,
ALEXANDER FUNT,
SUZANNE MORRISON AND
MALCOLM ROGERS

ORDER

WHEREAS on June 23, 2005, a Notice of Hearing and related Statement of Allegations were issued in respect of the Respondents, Momentas Corporation ("Momentas"), Howard Rash ("Rash"), Alexander Funt ("Funt"), Suzanne Morrison ("Morrison"), and Malcolm Rogers ("Rogers");

AND WHEREAS on April 4, 2006, the Commission made orders approving settlement agreements by Morrison and Rogers with Staff;

AND WHEREAS on May 23-25 and August 8, 2006, a hearing proceeded pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), for the Commission to consider whether it is in the public interest to make orders against Momentas, Rash and Funt;

AND WHEREAS in its Reasons for Decision dated September 5, 2006, the Commission found that Momentas, Rash and Funt violated the registration requirements of the Act and directed that the hearing resume to hear evidence and submissions as to appropriate sanctions;

AND WHEREAS the hearing to consider appropriate sanctions proceeded on June 11, 2007;

AND WHEREAS the Commission considers it to be in the public interest to make this order;

IT IS ORDERED:

a) that pursuant to paragraph 2 of subsection 127(1) of the Act, the Respondents permanently cease trading in securities;

b) that pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law permanently do not apply to the Respondents;

c) that pursuant to paragraph 7 of subsection 127(1) of the Act, Rash and Funt resign from any positions they hold as an officer or director of any issuer;

d) that pursuant to paragraph 8 of subsection 127(1) of the Act, Rash and Funt be permanently prohibited from becoming or acting as a director of any issuer;

e) that pursuant to paragraph 10 of subsection 127(1) of the Act, Rash disgorge $1,300,000 to the Commission to be allocated by the Commission to or for the benefit of third parties under section 3.4(2)(b) of the Act;

f) that pursuant to paragraph 10 of subsection 127(1) of the Act, Funt disgorge $1,260,000 to the Commission to be allocated by the Commission to or for the benefit of third parties under section 3.4(2)(b) of the Act;

g) that pursuant to paragraph 9 of subsection 127(1) of the Act, Rash and Funt pay an administrative penalty in the amount of $50,000 each for failure to comply with Ontario securities law to be allocated by the Commission to or for the benefit of third parties under section 3.4(2)(b) of the Act;

h) that pursuant to paragraph 6 of subsection 127(1) of the Act, Rash and Funt be and are hereby reprimanded; and

i) that pursuant to subsection 127.1(1) of the Act, Rash and Funt pay the amount of $38,782 toward the costs of or related to the hearing incurred by or on behalf of the Commission.

Dated at Toronto this 23rd day of July, 2007

"Wendell S. Wigle"

"Carol S. Perry"

2.2.2 CV Technologies Inc. - s. 144

Headnote

Application by an issuer for a revocation of a cease trade order issued by the Commission -- cease trade order issued because the issuer had failed to file certain continuous disclosure materials in the form and with the content required by Ontario securities law -- defaults subsequently remedied -- cease trade order revoked.

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am., s. 144.

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, CHAPTER S.5, AS AMENDED
(THE "ACT")

AND

IN THE MATTER OF
CV TECHNOLOGIES INC.

ORDER
(Section 144)

WHEREAS a Director of the Ontario Securities Commission (the "Commission") on May 7, 2007 issued a cease trade order (the "Cease Trade Order") pursuant to paragraphs 2 and 2.1 of subsection 127(1) of the Act which provided that all trading in and all acquisitions of the securities of CV Technologies Inc. (the "Applicant"), whether direct or indirect, shall cease until further order by the Director;

AND WHEREAS the Applicant has applied to the Commission pursuant to section 144 of the Act for a revocation of the Cease Trade Order;

AND WHEREAS the Applicant has represented to the Commission that:

1. The Applicant was incorporated under the *Business Corporations Act* (Alberta) on June 29, 1992. The Applicant is a reporting issuer in the Province of Ontario.

2. The Applicant is authorized to issue an unlimited number of common shares of which 103,551,006 common shares are issued and outstanding.

3. The Applicant is listed on the Toronto Stock Exchange and is not listed or quoted on any other exchange or market in Canada or elsewhere.

4. The Cease Trade Order was issued as a result of the Applicant's failure to file the following continuous disclosure materials in the form and with the content required by Ontario securities law (collectively, the "Default"):

   (a) audited annual financial statements for the year ended September 30, 2006; and

   (b) interim financial statements for the three-month period ended December 31, 2006.

5. On June 14, 2007, the Applicant filed with the Commission the foregoing continuous disclosure materials in the form and with the content required by Ontario securities law, and as a result the Applicant has remedied the Default.

6. On June 14, 2007, the Applicant filed interim financial statements, Management's Discussion & Analysis and corresponding certificates of interim filings for the three-month period ended March 31, 2007, and as a result the Applicant has brought its continuous disclosure record up to date.

7. On June 22, 2007, the Alberta Securities Commission sent a letter to the Applicant confirming that the Alberta Securities Commission cease trade order issued on April 19, 2007, as amended, expired as of the close of business on June 22, 2007.

8. The Applicant has paid all outstanding participation fees and late fees owing to the Commission.

9. To the best of its knowledge, the Applicant is not in default of any requirement of Ontario securities law.

AND WHEREAS the Director is satisfied that it would not be prejudicial to the public interest to revoke the Cease Trade Order;

IT IS ORDERED under section 144 of the Act that the Cease Trade Order is revoked.

DATED at Toronto this 10th day of July, 2007

"Jo-Anne Matear"
Assistant Manager,
Corporate Finance Branch
Ontario Securities Commission

2.2.3 G-Trade Services LLC - s. 211 of the Regulation

Headnote

Application in connection with application for registration as an international dealer, for an order pursuant to section 211 of the Regulation exempting the applicant from the requirement in subsection 208(2) of the Regulation that it carry on the business of an underwriter in a country other than Canada to be able to register in Ontario as an international dealer.

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am.

Regulations Cited

Regulation made under the Securities Act, R.R.O., Reg. 1015, as am., ss.100(2), 208(2) and 211

July 20, 2007

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, CHAPTER S. 5, AS AMENDED
(the Act)

AND

IN THE MATTER OF
ONTARIO REGULATION 1015,
R.R.O. 1990, AS AMENDED
(the Regulation)

AND

IN THE MATTER OF
G-TRADE SERVICES LLC

ORDER
(Section 211 of the Regulation)

UPON the application (the **Application**) of G-Trade Services LLC (the **Applicant**) to the Ontario Securities Commission (the **Commission**) for an order, pursuant to section 211 of the Regulation, exempting the Applicant from the requirement in subsection 208(2) of the Regulation that the Applicant carry on the business of an underwriter in a country other than Canada in order for the Applicant to be registered under the Act as a dealer in the category of international dealer;

AND UPON considering the Application and the recommendation of staff of the Commission;

AND UPON the Applicant having represented to the Commission that:

1. The Applicant has filed an application for registration as a dealer under the Act in the category of international dealer in accordance with section 208 of the Regulation. The Applicant is not presently registered in any capacity under the Act.

2. The Applicant is a limited liability company formed under the laws of the State of Delaware in the United States. The Applicant's principal place of business is located in New York, NY.

3. The Applicant is a member of the National Association of Securities Dealers Inc, and is registered with the United States Securities and Exchange Commission as a broker-dealer.

4. The Applicant does not currently act as an underwriter in the United States or in any other jurisdiction outside of the United States.

5. In the absence of the relief requested in this Application, the Applicant would not meet the requirements of the Regulation for registration as a dealer in the category of international dealer as it does not carry on the business of an underwriter in a country other than Canada.

6. The Applicant does not now act as an underwriter in Ontario and will not act as an underwriter in Ontario if it is registered under the Act as a dealer in the category of international dealer, despite the fact that subsection 100(2) of the Regulation provides that the registration of an international dealer authorizes the dealer to act as an underwriter for the sole purpose of making a distribution that it is authorized to make by section 208 of the Regulation

AND UPON the Commission being satisfied that to do so would not be prejudicial to the public interest;

IT IS ORDERED, pursuant to section 211 of the Regulation, that, in connection with the registration of the Applicant as a dealer under the Act in the category of international dealer, the Applicant is exempt from the provisions of subsection 208(2) of the Regulation requiring that the Applicant carry on the business of an underwriter in a country other than Canada, provided that, so long as the Applicant is registered under the Act as an international dealer:

(a) the Applicant carries on the business of a dealer in good standing in a country other than Canada; and

(b) notwithstanding subsection 100(2) of the Regulation, the Applicant shall not act as an underwriter in Ontario.

"Robert L. Shirriff"
Commissioner
Ontario Securities Commission

"Paul K. Bates"
Commissioner
Ontario Securities Commission

2.2.4 RBC Securities Australia Pty Limited - s. 211 of the Regulation

Headnote

Application in connection with application for registration as an international dealer, for an order pursuant to section 211 of the Regulation exempting the applicant from the requirement in subsection 208(2) of the Regulation that it carry on the business of an underwriter in a country other than Canada to be able to register in Ontario as an international dealer.

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am.

Regulations Cited

Regulation made under the Securities Act, R.R.O., Reg. 1015, as am., ss.100(2), 208(2) and 211.

July 20, 2007

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, CHAPTER S. 5, AS AMENDED
(the Act)

AND

IN THE MATTER OF
ONTARIO REGULATION 1015,
R.R.O. 1990, AS AMENDED
(the Regulation)

AND

IN THE MATTER OF
RBC SECURITIES AUSTRALIA PTY LIMITED

ORDER
(Section 211 of the Regulation)

UPON the application (the **Application**) of RBC Securities Australia Pty Limited (the Applicant) to the Ontario Securities Commission (the **Commission**) for an order, pursuant to section 211 of the Regulation, exempting the Applicant from the requirement in subsection 208(2) of the Regulation that the Applicant carry on the business of an underwriter in a country other than Canada in order for the Applicant to be registered under the Act as a dealer in the category of international dealer;

AND UPON considering the Application and the recommendation of staff of the Commission;

AND UPON the Applicant having represented to the Commission that:

1. The Applicant is formed under the laws of the state of New South Wales, Australia, with its principal place of business located in Sydney, New South Wales, Australia.

2. The Applicant is registered in Australia as a dealer with the Australian Securities and Investment Commission.

3. The Applicant does not currently carry on business as an underwriter in Australia or in any other jurisdiction.

4. The Applicant has filed an application for registration under the Act as a dealer in the category of international dealer in accordance with section 208 of the Regulation. The Applicant is not currently registered in any capacity under the Act.

5. In the absence of the relief requested in this Application, the Applicant would not meet the requirements of the Regulation for registration as an international dealer as the Applicant does not carry on the business of an underwriter in a country other than Canada.

6. The Applicant does not now act as an underwriter in Ontario and will not act as an underwriter in Ontario if it is registered under the Act as a dealer in the category of international dealer, despite the fact that subsection 100(2) of the Regulation provides that the registration of an international dealer authorizes the dealer to act as an underwriter for the sole purpose of making a distribution that it is authorized to make by section 208 of the Regulation.

AND UPON the Commission being satisfied that to do so would not be prejudicial to the public interest;

IT IS ORDERED, pursuant to section 211 of the Regulation, that, in connection with the registration of the Applicant as a dealer under the Act in the category of international dealer, the Applicant is exempt from the provisions of subsection 208(2) of the Regulation requiring that the Applicant carry on the business of an underwriter in a country other than Canada, provided that, so long as the Applicant is registered under the Act as an international dealer:

(a) the Applicant carries on the business of a dealer, in good standing, in a country other than Canada; and

(b) notwithstanding subsection 100(2) of the Regulation, the Applicant shall not act as an underwriter in Ontario.

"Robert L. Shirriff"
Commissioner
Ontario Securities Commission

"Paul K. Bates"
Commissioner
Ontario Securities Commission

2.2.5 The Province of Manitoba and The Manitoba Hydro-Electric Board - ss. 107, 108

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Relief from continuous disclosure and insider trading reporting requirements subject to certain conditions - Filers are a provincial government and a crown corporation – Filers issuing bonds which are either direct obligations of, or unconditionally guaranteed by the provincial government – The bonds are listed for trading on CNQ – Filers must be reporting issuers for Bonds to be listed .

Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 107, 108;
National Instrument 51-102 - Continuous Disclosure Obligations, s. 13.1;
Multilateral Instrument 52-109 - Certification of Disclosure in Issuer's Annual and Interim Filings, s. 4.5;
Multilateral Instrument 52-110 - Audit Committees, s. 8.1;
National Instrument 58-101 - Disclosure of Corporate Governance Practices, s. 3.1;
National Instrument 13-101 - System for Electronic Document Analysis and Retrieval, s. 7.1; and
National Instrument 55-102 - System for Electronic Disclosure by Insiders, s. 6.1.

IN THE MATTER OF
ONTARIO SECURITIES COMMISSION
RULE 13-502 FEES

AND

IN THE MATTER OF
THE PROVINCE OF MANITOBA AND
THE MANITOBA HYDRO-ELECTRIC BOARD

ORDER

WHEREAS the Director has received an application from The Province of Manitoba (the Province) and its wholly owned Crown corporation, The Manitoba Hydro-Electric Board (Manitoba Hydro) for an order, pursuant to section 6.1 of OSC Rule 13-502 Fees (Fees Rule), that the requirement to pay a participation fee under section 2.2 of the Fees Rule shall not apply to the Province or Manitoba Hydro, subject to certain terms and conditions.

AND WHEREAS the Province and Manitoba Hydro have represented to the Director that:

1. The Province is formally described as The Crown in Right of the Province of Manitoba.

2. Manitoba Hydro is formally described as The Manitoba Hydro-Electric Board, a wholly-owned Crown corporation of the Province pursuant to *The Manitoba Hydro Act*, as amended by *The Manitoba Hydro Amendment Act*.

3. The Province and Manitoba Hydro have each been designated as a reporting issuer by The Manitoba Securities Commission (MSC) as of May 29, 2007.

4. The Province and Manitoba Hydro have been issuing either Manitoba Hydro Bonds or Manitoba Builder Bonds annually since 1989 (collectively, the Bonds). Bonds can only be sold to Manitoba residents in the first instance. Manitoba Hydro does not have any securities issued to the public except Manitoba Hydro Savings Bonds. Manitoba Builder Bonds are direct obligations of the Province and Manitoba Hydro Bonds are unconditionally guaranteed as to principal and interest by the Province.

5. All securities of the Province and Manitoba Hydro issued and outstanding in Canada, including the Bonds, are, at the time of issue, exempt securities which qualify pursuant to the exemption available in subsection 2.34(2) of National Instrument 45-106 *Prospectus and Registration Exemption* (NI 45-106).

6. The Bonds rank *pari passu* with all other debt issues of the Province of Manitoba. No Bonds other than those that rank *pari passu* will be issued in the future. The Bonds are currently rated based upon the long term debt rating assigned to the Province. Long term direct debt obligations of the Province or debt obligations guaranteed by the Province are rated as follows by the following rating agencies:

Standard & Poors:	"AA-"
Moody's:	"Aa1"
DBRS:	"A (high)"

7. Financial information concerning the Province and Manitoba Hydro is available as follows:

   a. Disclosure sources for the Province, which includes budget information and the public accounts of the Province, are available at:

      http://www.gov.mb.ca/finance/financialreports.html

   b. and for Manitoba Hydro, which includes annual and interim financial statements, are available at:

      http://www.hydro.mb.ca/corporate/financial.shtml

      http://www.hydro.mb.ca/corporate/ar/archives.shtml and

      http://www.hydro.mb.ca/corporate/qr/archives.shtml

8. The Province and Manitoba Hydro, responding in part to Manitoba based broker requests, wish to provide greater liquidity and transparency with respect to such Bonds and have agreed to list Bonds, and future issuances of such bonds, on the Canadian Trading and Quotation System (CNQ) to facilitate secondary trading of Bonds.

9. As a consequence of proceeding to list the Bonds on CNQ, the Province and Manitoba Hydro became reporting issuers, and, in the absence of relief, would be required to satisfy continuous disclosure and other requirements which apply to reporting issuers. As a consequence, the Province and Manitoba Hydro (i) applied to the MSC for deemed reporting issuer status in Manitoba, (ii) applied to the MSC and the Ontario Securities Commission (OSC) for relief under the Mutual Reliance Relief System for relief from the continuous reporting and other requirements imposed on reporting issuers, and (iii) applied to the OSC for an exemption from the requirement to pay participation fees, subject to conditions.

10. The securities for which the relief is sought are existing Bonds and future issues of such Bonds, listed on CNQ, and such Bonds will either be direct debt obligations of the Province (in the case of Manitoba Builder Bonds) or obligations guaranteed by the Province (in the case of Manitoba Hydro Bonds). The existing Bonds are as follows:

Bond Series	Bond Type	Maturity Date
Builder Bonds VII	Annual Fixed Rate	June 15, 2008
Builder Bonds VII	Compound Fixed Rate	June 15, 2008
Builder Bonds VII	Annual Floating Rate	June 15, 2008
Builder Bonds VIII	Annual Fixed Rate	June 15, 2009
Builder Bonds VIII	Compound Fixed Rate	June 15, 2009
Builder Bonds VIII	Annual Floating Rate	June 15, 2009
Builder Bonds IX	Annual Fixed Rate	June 15, 2008
Builder Bonds IX	Annual Fixed Rate	June 15, 2010
Builder Bonds IX	Compound Fixed Rate	June 15, 2010
Builder Bonds IX	Annual Floating Rate	June 15, 2010
Hydro Bonds 9	Annual Fixed Rate	June 15, 2009
Hydro Bonds 9	Annual Fixed Rate	June 15, 2011
Hydro Bonds 9	Compound Fixed Rate	June 15, 2011
Hydro Bonds 9	Annual Floating Rate	June 15, 2011
Hydro Bonds 10	Annual Fixed Rate	June 15, 2010
Hydro Bonds 10	Annual Fixed Rate	June 15, 2012
Hydro Bonds 10	Compound Fixed Rate	June 15, 2012
Hydro Bonds 10	Annual Floating Rate	June 15, 2012

11. The Bonds must maintain a minimum "investment grade" rating to continue being listed on CNQ, being the following or better:

Standard & Poors:	"BBB"
Moody's:	"Baa"
DBRS:	"BBB"

12. Except for the Bonds, which are listed on CNQ, none of the securities of The Province or Manitoba Hydro are listed or proposed to be listed on any stock exchange in Canada, except that in 2002 the Province issued promissory notes maturing August 8, 2007, whose performance was linked to the Standard and Poor Index (S&P Notes), listed those S&P Notes on the Toronto Stock Exchange and obtained a local order from the OSC designating the Province as a

non-reporting issuer to comply with securities regulatory requirements at that time. The S&P Notes are still listed as at the date hereof.

13. In connection with the listing, the CNQ web site provides a “home” page for the Bond issues of the Province and Manitoba Hydro where web links, as described above, to the disclosure information for the Province and for Manitoba Hydro appear, and where the Bond ratings of the Province and Manitoba Hydro also appear. Changes in the debt rating of the Province will be reported on the Province of Manitoba "home" page on CNQ and the links to disclosure information on that same page will provide updated information about the Province and Manitoba Hydro as it becomes available.

14. Pursuant to the MRRS Decision Document dated July 16, 2007 (the July 16, 2007 Continuous Disclosure Exemption) granted to the Province and Manitoba Hydro by the MSC, as principal regulator, on behalf of itself and the OSC (collectively, the Decision Makers), the Decision Makers made a decision:

(i) under section 13.1 of National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) that the requirements of NI 51-102 shall not apply to the Province and Manitoba Hydro;

(ii) under section 4.5 of Multilateral Instrument 52-109 – *Certification of Disclosure in Issuers' Annual and Interim Filings* (MI 52-109) that the requirements of MI 52-109 shall not apply to the Province and Manitoba Hydro;

(iii) under section 8.1 of Multilateral Instrument 52-110 – *Audit Committees* (MI 52-110) that the requirements of MI 52-110 shall not apply to the Province and Manitoba Hydro;

(iv) under section 3.1 of National Instrument 58-101 – *Disclosure of Corporate Governance Practices* (NI 58-101) that the requirements of Part 2 of NI 58-101 shall not apply to the Province and Manitoba Hydro;

(v) under section 7.1 of National Instrument 13-101 – *System for Electronic Document and Analysis and Retrieval* (SEDAR) do not apply to the Province and Manitoba Hydro; and

(vi) under the securities legislation of the Province of Ontario and the Province of Manitoba and under section 6.1 of National Instrument 55-102 – *System for Electronic Disclosure by Insiders* that the insider reporting requirements of the securities legislation of the Province of Ontario and the Province of Manitoba and the requirement to file an insider profile do not apply to the Province and Manitoba Hydro;

subject to the conditions contained in that decision as follows:

(a) The Bonds are listed on CNQ and will not be listed on any other exchange except CNQ, and no other securities of the Province or Manitoba Hydro, apart from the Bonds and the S&P Notes , are to be listed on an exchange in Canada.

(b) Changes in the debt rating of the Province are reported on the Province of Manitoba "home" page on CNQ on a timely basis and the links to disclosure information on that same page are maintained to provide updated information about the Province and Manitoba Hydro as it becomes available.

(c) The Bonds are fully guaranteed by the Province and maintain a minimum "investment grade" rating as described in paragraph 11 of this Order.

(d) All future debt issued by the Province or Manitoba Hydro will rank *pari passu* or be subordinate to the Bonds.

(e) The Bonds and any other securities issued by the Province and Manitoba Hydro are or will be issued on a basis which is exempt from the prospectus requirements of the Legislation and only issued relying upon s. 2.34(2) of NI 45-106.

15. No continuous disclosure documents concerning the Province of Manitoba and Manitoba Hydro will be filed with the OSC unless the conditions in the Continuous Disclosure Exemption are not satisfied.

16. The Province of Manitoba and Manitoba Hydro would be required (but for this order) to pay participation fees under the Fees Rule.

THE ORDER of the Director under the Fees Rule is that the requirement to pay a participation fee under section 2.2 of the Fees Rule does not apply to the Province of Manitoba and Manitoba Hydro, for so long as:

(i) Manitoba Hydro continues to be a wholly owned Crown corporation of the Province of Manitoba pursuant to *The Manitoba Hydro Act*, as amended by *The Manitoba Hydro Amendment Act*.

(ii) the Province of Manitoba and Manitoba Hydro continue to satisfy all of the conditions contained in the July 16, 2007 Continuous Disclosure Exemption.

DATED July 24 , 2007.

"Jo-Anne Matear"
Assistant Manager, Corporate Finance
Ontario Securities Commission

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Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 Sterling Centrecorp Inc. et al.

IN THE MATTER OF
THE SECURITIES ACT
R.S.O. 1990, CHAPTER S.5, AS AMENDED

- AND -

IN THE MATTER OF
STERLING CENTRECORP INC., AND
SCI ACQUISITION INC.

- AND -

IN THE MATTER OF
FIRST CAPITAL REALTY INC. AND
GAZIT CANADA INC.

REASONS AND DECISION

Hearing:	May 17, 2007		
Panel:	Lawrence E. Ritchie	-	Vice-Chair (Chair of the Panel)
	Harold P. Hands	-	Commissioner
	Carol S. Perry	-	Commissioner
Counsel:	Kelley McKinnon Pamela Foy Naizam Kanji Erin O'Donovan	-	for Staff of the Ontario Securities Commission
	James C. Tory Crawford Smith Andrew Gray Patricia Koval	-	for First Capital Realty Inc. and Gazit Canada
	Eliot N. Kolers Marie Isabelle Palacios-Hardy Mihkel E. Voore	-	for SCI Acquisition Inc.
	S. Dale Denis Stephen N. Infuso Aaron Sonshine	-	for Sterling Centrecorp Inc.
	Robert L. Armstrong Alan B. Merskey	-	for the Special Committee of the Board of Directors of Sterling Centrecorp Inc.

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DECISION AND REASONS

I. OVERVIEW

A. Background to the Proceeding

[1] This is an application (the "Application") under sections 104 and 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"). The applicants, First Capital Realty Inc. ("First Capital") and Gazit Canada Inc. ("Gazit"), (collectively, the "Applicants"), are common shareholders of Sterling Centrecorp Inc. ("Sterling") who oppose a going private transaction (the "Going Private Transaction") – initiated by a group of inside directors and officers of Sterling (the "Insiders"), through the acquisition vehicle, SCI Acquisition Inc. ("SCI Acquisition").

[2] The Insiders, collectively, own or control approximately 35.3% of Sterling's common shares. Through a series of support agreements (the "Support Agreement(s)"), the Going Private Transaction has support of the votes attaching to 14,764,964 Sterling securities – more than half of the securities not owned or controlled by the Insiders.

[3] Under Ontario law, the Going Private Transaction needs to be approved by two-thirds of Sterling security holders, as well as a "majority of the minority" (as discussed below). With the support of the Support Agreement counterparties (the "Supporting Shareholders"), Sterling and SCI Acquisition take the position that the Going Private Transaction achieves the requisite support within the scope of *OSC Rule 61-501 – Insider Bids, Issuer Bids, Business Combinations and Related Party Transactions* (2004), 27 O.S.C.B. 5975 ("Rule 61-501"). However, the Applicants challenge this result.

[4] First Capital and Gazit take the position that the Supporting Shareholders and the Insiders are "joint actors" within the meaning of Ontario securities law. As such, the votes attached to the shares of these "joint actors" should not be included in the calculation of the "majority of the minority".

[5] In their Application, First Capital and Gazit request that the Commission make an order under section 104 requiring Sterling to:

(1) comply with Rule 61-501 by excluding from the calculation of the majority of the minority securities of Sterling held by SCI Acquisition's joint actors; and

(2) make proper disclosure of the Support Agreements and SCI Acquisition's intentions with respect to any competing proposal.

(3) Further, it is submitted that the Support Agreements engage the Commission's public interest jurisdiction and warrant intervention in the Going Private Transaction, which should be cease traded until the requested section 104 order has been complied with.

[6] In the course of their submissions, the Applicants provided the Commission with a proposed draft order requesting the following relief:

(1) Sterling is directed to comply with Ontario Securities Law in respect of the Going Private Transaction; and

(2) The Going Private Transaction is cease traded until the Circular in respect of the Going Private Transaction is amended to disclose that Sterling will exclude from the calculation of the required majority of the minority approval the votes attached to the common shares and other securities that are subject of the Support Agreements.

B. The Parties

i) Sterling

[7] Sterling is incorporated pursuant to the provisions of the *Business Corporations Act* (Ontario), R.S.O. 1990, c. B.16, as amended ("OBCA"), and is a real estate investment and management services company specializing in the retail property sector, which is traded on the Toronto Stock Exchange ("TSX"). The company has offices in Toronto, Edmonton and Montreal, and its U.S. subsidiary ("Sterling USA, Inc.") has offices located in West Palm Beach, Charlotte, Dallas, San Antonio and Scottsdale. The co-Chief Executive Officers of Sterling are John W. S. Preston ("John Preston") and A. David Kosoy ("David Kosoy"). The President and Chief Operating Officer of Sterling is Robert S. Green ("Robert Green"). As at February 28, 2007, Sterling had 35,628,969 common shares issued and outstanding which were listed for trading on the TSX. Sterling has also issued options with an exercise price less than $1.26 per common share ("In-the-money Options") and restricted stock units ("RSUs"). At the close of business on March 30, 2007, there were 414,705 In-the-money Options, and 2,571,916 RSUs outstanding. The common shares, In-the-money Options and RSUs are collectively referred to as the "Securities".

ii) SCI Acquisition

[8] SCI Acquisition was incorporated in October 2006 as a vehicle for the contemplated Going Private Transaction. The officers and directors of SCI Acquisition are four directors and senior officers of Sterling or its subsidiaries: John Preston, Brian D. Kosoy ("Brian Kosoy") and Robert Green and Stephen Preston ("Stephen Preston"), a Vice-President of a Sterling subsidiary (collectively the "Acquisition Group").

[9] SCI Acquisition and its shareholders own or control 12,573,000 common shares of Sterling representing 35.3% of its outstanding common shares. As at February 28, 2007, John Preston, Stephen Preston, Robert Green and Brian Kosoy beneficially owned, directly or indirectly, or exercised control or direction over common shares as follows:

Name	Common Shares	Percentage of Outstanding Common Shares
John W.S. Preston	7,743,872	21.74%
Stephen Preston	950,000	2.67%
Robert S. Green	3,079,128	8.64%
Brian D. Kosoy	800,000	2.25%

iii) First Capital and Gazit

[10] First Capital is an Ontario corporation with its head office in Toronto. First Capital is a real estate company focused on the ownership, development and operation of supermarket anchored neighbourhood and community shopping centers located across Canada. First Capital is also a significant shareholder in the largest shopping centre real estate investment trust in the United States. First Capital is a publicly traded company whose shares are listed for trading on the TSX.

[11] First Capital's largest common shareholder is Gazit which owns a majority of the issued and outstanding common shares of First Capital. Gazit regularly invests in real estate development companies and, in addition to First Capital, owns shares in nearly a dozen other real estate companies across North America.

[12] First Capital and Gazit are both common shareholders of Sterling. As at the date of Sterling's Annual and Special Meeting on April 30, 2007, First Capital owned 1,690,200 common shares and Gazit owned 1,305,000 common shares, representing approximately 9% of the outstanding common shares.

C. The Application

[13] On March 26, 2007, First Capital and Gazit (through their counsel) wrote to Staff of the Ontario Securities Commission ("Staff") suggesting the parties to the Support Agreements should be regarded as "joint actors" within the meaning of Ontario securities laws, with the effect that the shares held by those parties should be excluded from the majority of the minority approval required in connection with the Going Private Transaction under Rule 61-501. This correspondence continued between March 26, 2007 and April 25, 2007.

[14] On April 25, 2007, First Capital and Gazit filed an Application requesting that the Commission convene a hearing to consider matters in connection with the offer by SCI Acquisition to acquire all the outstanding common shares of Sterling by way of a plan of arrangement. On April 27, 2007, the Commission issued a Notice of Hearing under subsection 104(1) of the Act with respect to the Going Private Transaction and the Support Agreements.

[15] The evidence filed in the course of this Application includes:

(a) Six affidavits with exhibits;

(b) Five document requests by First Capital/Gazit;

(c) 1,100 pages of documents produced in response to such requests;

(d) Seven separate examinations or cross-examinations of witnesses;

(e) Three sets of answers to undertakings; and

(f) Nine volumes of evidence comprising 2,627 pages.

[16] Written submissions were received from First Capital and Gazit, SCI Acquisition, Sterling, the Special Committee of Sterling Centrecorp Inc., and Staff in advance of the hearing. On June 4, 2007, the Commission issued an Order with reasons to follow after the parties to the Application requested a decision from the Commission in advance of a court hearing scheduled for June 8, 2007. The Order, attached as Appendix A, provides that:

(1) Pursuant to subsections 104(1) and 127(1) of the Act, Sterling shall correct the record of the votes cast at the Meeting held on April 30, 2007 in respect of the Going Private Transaction, to exclude from the Rule 61-501 Calculation, the votes attached to all common shares and other securities of Sterling held by David Kosoy and First National Investments Inc.

(2) The Application is otherwise dismissed.

II. THE FACTS

A. Early Developments

[17] The current incarnation of Sterling was formed in March 2001 when Sterling Financial Corporation (formerly Samoth Capital Corporation) combined with the Centrecorp Group of Companies. David Kosoy and Brian Kosoy were major shareholders and senior management of Sterling Financial Corporation and John Preston and Robert Green were principals of Centrecorp. David Kosoy and John Preston became the co-chairmen and co-CEOs of Sterling at that time.

[18] A memorandum of agreement (the "Memorandum of Agreement"), dated March 1, 2001, was entered into among the "Kosoy Group", the "Green Group" and the "Preston Group", each as defined in the Memorandum of Agreement, in order to ensure "the smooth joint management of Sterling by restricting acquisitions of Sterling shares by the parties to the Memorandum of Agreement and by providing for nominations by them of directors to the board of directors of Sterling." The parties to the Memorandum of Agreement collectively owned over 50% of the issued and outstanding Securities of Sterling. In addition to the four principals personally, the other parties to the agreement included RSG Corp. (a personal holding company of Robert Green), JMSC Holdings Inc. (a personal holding company of John Preston and his immediate family), First National Investments Inc. (a personal holding company of David Kosoy) and the Sterling Trust (a trust included in the "Kosoy Group" according to the document).

[19] Sterling's business model is focused on the leveraged acquisition and further development of shopping centres and commercial retail properties with the intention of generating capital gains upon asset disposition as opposed to focusing on generation of rental income.

[20] By late 2004, Sterling was enjoying some success in acquiring shopping centres in both Canada and the United States. In order to build on that potential, the principals agreed to extend the Memorandum of Agreement for an additional two years, to February 1, 2007. However, by the Fall of 2005, the market had started to change. The market capitalization rates and yield expectation for existing shopping centres were decreasing rapidly, resulting in a corresponding increase in the price of prospective shopping centre acquisitions. This made it extremely difficult for Sterling to grow its shopping centre portfolio through shopping centre acquisitions given its more expensive cost of capital compared to larger public real estate entities, pension funds, financial institutions and other competitors. It became increasingly apparent to management and the Board that the business of Sterling was not likely to be successful in the long term as constituted.

[21] In July 2005, a Special Committee was formed in response to a proposed offer for Sterling from RioCan Real Estate Investment Trust ("RioCan"). The Committee was in the process of engaging GMP Securities as its financial advisor when RioCan withdrew its offer. One of RioCan's reasons for withdrawing was the complexity of the ownership structures of Sterling's assets. The Board of Directors of Sterling began considering various options including a privatization of the company.

[22] In April 2006, SCI Acquisition, together with certain Insiders, and David Kosoy, advised the Board of Directors that they were considering a proposal to take Sterling private. At this stage, the Insiders constituted approximately 45% of the outstanding common shares.

[23] On May 9, 2006, the Board of Directors of Sterling established a special committee of independent directors (the "Special Committee"), comprised of Bernard Kraft (Chair), Peter Burnim and Stewart Robertson. The Special Committee retained outside counsel, Ogilvy Renault LLP, and engaged GMP Securities L.P. ("GMP") as the independent financial advisor to prepare a formal valuation and fairness opinion in connection with that potential transaction.

[24] GMP prepared a valuation in accordance with Rule 61-501 and a fairness opinion which proposed a range of the fair market value of $1.15 to $1.27 per common share.

[25] The Special Committee met on December 8, 2006, with its legal and financial advisors to identify the remaining issues in connection with GMP's valuation. The Special Committee noted that, in discussing the Company's prospects, concern was

expressed by the Board that Sterling was facing a substantial projected negative cash flow for 2007-2009 in the absence of asset sales, and that if the proposed transaction was not to proceed, alternatives may have to be explored, including a wind-up and liquidation. According to Sterling's Management Information Circular (the "Circular"), the Board was of the view that a wind-up and liquidation would negatively affect shareholder value compared to the Going Private Transaction.

B. The Support Agreements

[26] As stated above, at issue in this proceeding is the effect of the Support Agreements on the outcome of the shareholder vote.

i) Terms

[27] The Support Agreements all contain identical support provisions which provide as follows:

> **2.3** Acquiror [SCI Acquisition] further covenants, acknowledges and agrees that if the Going Private Transaction is terminated prior to the Expiration Date by the acceptance by the [Insiders], of a superior bid from a third party, then notwithstanding anything herein contained, Shareholder will be entitled, contemporaneously with the [Insiders] and at the same price per Share (and payment terms) as pertain to the [Insiders], to tender its Shares to such third party in acceptance of such superior bid. […]
>
> […]
>
> **3.1** Prior to the Expiration Date, at every meeting of the shareholders of the Corporation, however called, at which any of the following matters is considered or voted upon, and at every adjournment or postponement thereof. Shareholder shall, subject, however, to the provisions of Section 2.3, vote or cause the holder of record to vote all of the Shares:
>
> (a) in favour of approval and adoption of the Going Private Transaction and the transactions contemplated thereby;
>
> (b) against approval of any proposal made in opposition to or competition with consummation of the Going Private Transaction;
>
> (c) against approval of any proposal from any party other than Acquiror;
>
> (d) against any action or proposal that is intended to, or is reasonably likely to, result in the conditions of the Corporation's obligations under the Going Private Transaction not being fulfilled;
>
> (e) against any action which would reasonably be expected to impede, interfere with, delay, postpone or materially adversely affect consummation of the transactions contemplated by the Going Private Transaction.
>
> […]
>
> **4.1** Shareholder hereby revokes any and all other proxies or powers of attorney in respect of all or any of the Shares and agrees that until the Expiration Date, Shareholder hereby irrevocably appoints Acquiror or any individual designated by Acquiror, and each of them, as Shareholder's agent, attorney-in-fact and proxy (with full power of substitution and re-substitution), for and in the name, place and stead of Shareholder, to vote (or cause to be voted) the Shares held of record by Shareholder or held of record by any other party on behalf of Shareholder, in the manner set forth in Section 3 at any meeting of the shareholders of the Corporation.
>
> […]
>
> **5.1** Prior to the Expiration Date, Shareholder shall not, without the prior written consent of the Acquiror:
>
> (a) transfer, assign, sell or otherwise dispose of or grant a security interest in any of the Shares or any right or interest therein not enter into any agreement to do any of the foregoing ("Transfer"); or
>
> (b) take any action that would make any representation or warranty of Shareholder contained herein untrue or incorrect or have the effect of preventing or disabling Shareholder from performing or interfering with Shareholder's ability to perform its obligations under this Agreement.

[28] The support provisions in the Support Agreements are described by Sterling in its Circular as follows:

> "Under the terms of the Support Agreements, the Public Securityholders who signed such agreements cannot withdraw their support for the Arrangement nor accept a bid from a third party unless the Purchaser and its shareholders elect to tender to such bid."

ii) The Purpose of the Support Agreements

[29] First Capital is a publicly traded company and Gazit owns a majority of its issued and outstanding common shares. Dori J. Segal is the president of both First Capital and Gazit. The Acquisition Group was aware that one or both of First Capital or Gazit (collectively, the "First Capital Group") were public shareholders of Sterling and that at the time the Acquisition Group announced its intentions, the First Capital Group owned about 2% to 3% of the outstanding common shares of the company.

[30] For over ten years, the First Capital Group, has had a history of litigation and threatened litigation with the members of Acquisition Group and with Sterling or its subsidiaries.

[31] According to the evidence of Robert Green, in light of the previous litigious experiences with the First Capital Group, and the knowledge that the First Capital Group were public shareholders of Sterling (owning or controlling about 2 to 3% of the outstanding common shares), the Acquisition Group was very concerned that the First Capital Group might attempt to interfere with the proposed Going Private Transaction once any such transaction was announced. In these circumstances, the Acquisition Group was not willing to proceed with any proposed transaction unless they could obtain support of holders of a sufficient number of Sterling's Securities in advance of announcing the proposed transaction to effectively ensure they could succeed in having the transaction approved.

[32] For this purpose, SCI Acquisition's counsel prepared the Support Agreement. The document was negotiated in January 2007 with counsel for David Kosoy and was also discussed with counsel for Peter Thomas, a significant shareholder of Sterling. The form of Support Agreement was finalized on or about January 26, 2007.

iii) David Kosoy Approaches Major Shareholders

[33] In November 2006, the Acquisition Group and David Kosoy decided that an approach should be made to one or two of the other large Sterling shareholders to ascertain their interest in supporting a Going Private Transaction. To that end, a meeting was arranged between Peter Thomas and David Kosoy in November 2006 at which Peter Thomas expressed a willingness, in principle, to support a transaction. Peter Thomas owns or controls 3,312,137 Securities of Sterling in his own name. In the course of his discussions with David Kosoy, Peter Thomas also indicated that he wanted $250,000 of the consideration paid to him as a non-refundable deposit in connection with signing the agreement to support the Going Private Transaction. Following consultation with legal counsel, David Kosoy subsequently advised Peter Thomas that a non-refundable deposit in respect of his Securities could not be paid and that he needed to be treated like all other shareholders. In a subsequent discussion between David Kosoy and Peter Thomas, David Kosoy advised that the price to be offered likely would be $1.26. According to the evidence before us, Peter Thomas and David Kosoy had no further discussions regarding his support of the Going Private Transaction.

[34] David Kosoy thereafter approached Peter Schlessinger of Apex Investment Fund Ltd. Mr. Schlesinger advised that he would be supportive of a transaction at a price of $1.26 per share. Apex Investment Fund Ltd. owns or controls 1,459,000 Securities of Sterling.

[35] After the price per share of $1.26 had been settled in principle with Peter Thomas and Peter Schlessinger, David Kosoy concluded that he did not wish to participate as a member of the Acquisition Group as he wanted to more actively pursue other interests. By January 11, 2007, as set out in the minutes of the Special Committee of that date, David Kosoy advised the Acquisition Group that he did not intend to increase his ownership interest in Sterling and that he wished instead to be a seller in the contemplated transaction.

iv) SCI Approaches Other Shareholders

[36] After David Kosoy and Peter Thomas both agreed to support the transaction and sign the form of Support Agreement required by SCI Acquisition, (on January 30, 2007 and February 2, 2007, respectively) the Acquisition Group began to seek the support of other shareholders to enter into the same form of Support Agreement. Brian Kosoy was the officer who had primary responsibility within SCI Acquisition for obtaining the level of support required. He undertook these efforts mostly during the first week of February 2007.

[37] By March 8, 2007, fifteen Supporting Shareholders, including David Kosoy, a company he controlled and Sterling Trust, a Trust that he had settled, executed Support Agreements. Brian Kosoy was the officer who signed each of the Support Agreements on behalf of SCI Acquisition. Each of the Support Agreements was signed by the supporting security holder on the

date indicated on the face of the agreement except for the following: Peter Thomas (which was signed February 2, 2007); David Kosoy (which was signed January 30, 2007, but held in escrow by his counsel until February 8, 2007); and Sterling Trust (which was signed February 7, 2007, but held in escrow by counsel until February 8, 2007).

[38] In addition, five (5) of the Support Agreements were signed after February 8, 2007, the date the proposed transaction was publicly announced including those signed by the Erlbaum Family Limited Partnership and four employees of Sterling or its subsidiaries.

[39] The fifteen (15) Supporting Shareholders who signed the Support Agreements, the dates executed and the numbers of Securities committed under the Support Agreements are described below:

Support Agreements		
Shareholder	**Date Executed**	**Total Securities**
David Kosoy & First National Investments Inc.	January 30, 2007	3,841,820
The Sterling Trust	February 7, 2007	3,406,971
Peter Thomas	February 2, 2007	3,312,137
Apex Investment Fund Ltd.	January 31, 2007	1,459,000
Kimco Realty Corporation	February 7, 2007	720,500
Erlbaum Family Limited Partnership	February 28, 2007	597,100
Henry Bereznicki	February 5, 2007	570,900
Richard Levinsky	February 7, 2007	347,873
Gregory Moross	February 5, 2007	98,500
Marcus Bertagnolli	February 5, 2007	68,500
Chris Chamberlain	March 8, 2007	51,000
Thomas Hamilton	February 6, 2007	41,667
Vincent Costello	March 6, 2007	26,000
Craig Mueller	March 6, 2007	25,000
Russell Watson	March 1, 2007	25,000

C. The Going Private Transaction

[40] SCI Acquisition presented a term sheet dated January 9, 2007, to the Special Committee for its consideration regarding the proposed Going Private Transaction (the "Term Sheet"). The Special Committee reviewed the Term Sheet during a meeting held on January 11, 2007. The Term Sheet contemplated the Going Private Transaction involving Sterling and its shareholders to be effected through a plan of arrangement (the "Plan of Arrangement" or "Arrangement Agreement") under section 182 of the OBCA. The Term Sheet provided for:

(a) per share consideration of $1.26;

(b) the Support Agreements, to be executed by certain Shareholders (including David Kosoy and his affiliates); and

(c) a non-solicitation clause and a "fiduciary out" in the event of a superior proposal to be included in the Arrangement Agreement.

i) Business Combination is Acceptable to the Special Committee

[41] The Special Committee met on February 7, 2007, to consider the valuation prepared by GMP, and to consider whether to recommend to the Board that Sterling enter into a Plan of Arrangement in furtherance of the Going Private Transaction. The Special Committee concluded that the Going Private Transaction maximized shareholder value after taking into account the following factors:

(a) the failure of the original third party negotiations in 2005;

(b) the independent valuation of GMP performed in accordance with the requirements of Rule 61-501;

(c) the approach and subsequent retrenchment of two other potential third party bidders;

(d) the complex nature of the partnerships involved in Sterling's asset structure; and

(e) the possible requirement of expensive termination provisions in the event of third party bids.

[42] After reviewing the GMP valuation, the Special Committee resolved to recommend that the Board of Directors:

(a) approve the entering into by Sterling of the Arrangement Agreement to implement the Plan of Arrangement with SCI Acquisition;

(b) recommend that the Public Security holders (minority shareholders) of Sterling vote in favour of the Plan of Arrangement with SCI Acquisition.

[43] The Board of Directors of Sterling met on February 8, 2007, to consider the Special Committee's report. The members of the Board, other than John Preston, Robert Green and David Kosoy who did not vote, unanimously approved the terms of the Plan of Arrangement and unanimously recommended that the shareholders and other security holders vote in favour of the Arrangement Agreement at the annual and special meeting of shareholders. According to the evidence of Janet Hendry, Sterling's Corporate Secretary, the Board based its approval upon (a) the unanimous recommendation of the Special Committee, (b) the valuation, and (c) the fairness opinion.

ii) Sterling Issues Two Press Releases

[44] On February 8, 2007, Sterling issued a press release stating that it had entered into an agreement with SCI Acquisition to effect a Going Private Transaction whereby SCI Acquisition would acquire all of the outstanding common shares of Sterling not already owned or controlled by SCI Acquisition and its shareholders at a price of $1.26 per common share.

[45] The press release also stated that:

> [s]hareholders of Sterling holding an aggregate of 12,588,064 common shares have entered into support agreements with SCI Acquisition agreeing to vote their common shares in favour of the plan of arrangement. These common shares represent approximately 54.6% of the outstanding common shares other than those owned or controlled by SCI Acquisition and its shareholders.

[46] Additional shareholders entered into Support Agreements with SCI Acquisition following the February 8th press release. On March 30, 2007, Sterling mailed its Circular to its shareholders. The Circular discloses that Supporting Shareholders holding an aggregate of 14,765,964 of the votes attached to the outstanding common shares, In-the-money Options and RSUs have entered into the Support Agreements with SCI Acquisition agreeing to vote their Securities in favour of the Going Private Transaction. These votes are said to represent approximately 60.3% of the outstanding voting rights other than those controlled by SCI Acquisition and its shareholders.

[47] Sterling issued a second press release on February 23, 2007, to provide further details as to the terms of the Support Agreements signed in connection with the Going Private Transaction announced on February 8, 2007. In the press release, Sterling indicated as follows:

> The votes attaching to the shares and other securities owned by SCI Acquisition and its shareholders, together with those covered by these support agreements, are sufficient to approve the going private transaction. Further, under the terms of these support agreements, the Public Securityholders who signed such agreements cannot withdraw their support for the going private transaction nor accept a bid from a third party, unless SCI Acquisition and its shareholders elect to tender to such bid.

[48] On March 6, 2007, Sterling commenced an Application in the Ontario Superior Court of Justice with respect to the proposed Plan of Arrangement between Sterling and SCI Acquisition. The same day, the Honourable Madam Justice Lax issued an Order (the "Interim Order") permitting Sterling to call, hold and conduct an Annual and Special Meeting of Shareholders (the "Meeting") to, among other things, authorize, adopt and approve the Plan of Arrangement.

[49] A special meeting of shareholders of Sterling to consider the proposed transaction was announced on March 30, 2007, and was subsequently held on April 30, 2007 at the offices of Fogler, Rubinoff LLP.

D. First Capital Group's Opposition to the Going Private Transaction

[50] Commencing February 9, 2007, after the announcement of the Going Private Transaction, the First Capital Group started acquiring common shares of Sterling in the marketplace. From February 9 to April 30, 2007, the First Capital Group increased their holdings in Sterling by 1,910,200 common shares – nearly tripling their combined stake in the company – to approximately a 9% interest in Sterling, as at the hearing date.

[51] As stated in paragraph [13] above, on March 26, 2007, the First Capital Group (through their counsel) wrote to Staff asserting that the parties to the Support Agreements should be regarded as "joint actors" within the meaning of Ontario securities laws, with the effect that the shares held by those parties should be excluded from the majority of the minority approval required in connection with the Going Private Transaction under Rule 61-501.

[52] On April 24, 2007, six days prior to the scheduled meeting of shareholders, the First Capital Group filed notices of objection to the Plan of Arrangement (prior to the deadline for receipt being 10:00 a.m. (Toronto time) on April 26, 2007) pursuant to the rights of dissent granted to Shareholders under the terms of the Interim Order and the Arrangement Agreement (which adopted the procedure for the assertion of such rights provided under s. 185 of the OBCA).

i) The First Capital Group Makes Conditional Bid at the Eleventh Hour

[53] On April 25, 2007, five days before the scheduled meeting, the First Capital Group delivered a letter to the Special Committee. In that letter, the First Capital Group indicated that it was prepared to propose a take-over bid at a price of $1.62 per share, payable in cash or combination of cash and shares of the First Capital Group, subject to the completion of satisfactory due diligence and other customary conditions. Further, in that letter, the First Capital Group requested access to due diligence materials in order to complete its assessment of Sterling and to structure a definitive offer. As well, the First Capital Group delivered an additional letter to the Special Committee on April 29, 2007, to advise of its intention to make the offer and to "strongly reiterate" its request that Sterling postpone the Meeting. This request was based on the First Capital Group's anticipated offer, as well as the announcement by the Commission on April 27, 2007, that it had convened this Hearing after receiving an Application from the First Capital Group dated April 25, 2007.

[54] On April 27, 2007, the Special Committee advised the First Capital Group that it would not provide access to due diligence materials or otherwise participate in discussions with the First Capital Group, citing contractual restrictions between Sterling and SCI Acquisition. As well, the Special Committee advised that it was not prepared to recommend that the Meeting be adjourned or postponed.

[55] On April 29, 2007, the day before the Meeting, the First Capital Group announced that it intended to make an all-cash takeover bid to acquire all of the outstanding common shares of Sterling at a price of $1.62 per share. The First Capital Group indicated in its press release that the offer would be subject to customary conditions, except that it would not be subject to any minimum tender condition, and that it would be subject to the condition that the Plan of Arrangement proposed by Sterling and SCI Acquisition does not receive final approval.

[56] According to the written submissions of the Special Committee, First Capital Group's first proposed offer was viewed by the Special Committee as doomed to fail. It included a condition for two-thirds of the outstanding common shares of Sterling. By press release dated April 30, 2007, Sterling explained its decision to deny the First Capital Group's request (made a day earlier) to postpone the Meeting in the following terms:

> [First Capital Group] has also asked Sterling to postpone the meeting of shareholders called for April 30, 2007 to consider the Arrangement. Based on legal advice, the Sterling Board has determined that Sterling is obliged, under the terms of the Arrangement Agreement, to proceed with the meeting on that date.

E. Annual and Special Meeting of the Shareholders

[57] On April 30, 2007, Sterling held the Meeting and asked security holders to consider the Going Private Transaction. The Meeting was chaired by Jack Gilbert, the Secretary to the Board of Directors of Sterling. At the outset of the Meeting, the First Capital Group brought a motion to adjourn the Meeting to afford security holders more time in which to consider its offer. The motion was dismissed.

[58] Pursuant to the Arrangement Agreement, shareholders of Sterling are entitled to vote at the Meeting, in person or by proxy, as follows:

(a) each holder of common shares is entitled to one vote for each common share held; and

(b) each holder of an In-the-money Option and each holder of an RSU is entitled, in respect of the Arrangement Resolution, to one vote for each common share that such holder would have received on the valid exercise of such securities.

[59] The scrutineers of the Meeting reported that 165 shareholders holding 35,525,456 Securities were represented in person or by proxy, being 92.20 percent of the issued and outstanding Securities of Sterling.

[60] With respect of the vote on the Arrangement Agreement resolution (the "Arrangement Resolution"), the scrutineers prepared four separate Reports on Ballot according to which the final result of the vote was as follows:

(a) Security holders cast a total of 35,525,456 votes in respect of the Arrangement Resolution: 32,304,696 (90.93%) in favour, and 3,220,760 (9.07%) against.

(b) Security holders other than members of the Acquisition Group cast a total of 21,412,206 votes in respect of the Arrangement Resolution: 18,191,446 (84.96%) in favour, and 3,220,760 (15.04%) against.

(c) Common shareholders cast a total of 32,624,688 votes in respect of the Arrangement Resolution: 29,403,908 (90.13%) in favour, and 3,220,760 (9.87%) against.

(d) Common shareholders other than members of the Acquisition Group cast a total of 20,051,668 votes in respect of the Arrangement Resolution: 16,830,908 (83.94%) in favour, and 3,220,760 (16.06%) against.

[61] The Arrangement Resolution was therefore duly passed, without amendment, by Sterling's shareholders in accordance with the requirements of the Interim Order and the Arrangement Agreement.

III. ISSUES

[62] This Application raises the following issues:

1. Does the application of Rule 61-501 require the exclusion from the minority of any of the Supporting Shareholders as being "joint actors" with SCI Acquisition and the Insiders for purposes of the approval of the Arrangement Agreement?

2. What order, if any, should the Commission make in the event that it determines that any of the Supporting Shareholders ought to be excluded from the majority of the minority vote under Rule 61-501?

IV. SUMMARY OF CONCLUSION

[63] Having regard to the facts of this matter and the submissions of the parties we have concluded that David Kosoy (and therefore First National Investments Inc.) was and is deemed to remain, during the life of the Insider Bid, a "joint actor" with the Acquisition Group within the meaning of Rule 61-501.

[64] As set out in greater detail below, having found David Kosoy to be a joint actor, we find that his securities and the securities over which he had control and direction should be excluded from the determination of the "majority of minority" calculation required by Rule 61-501.

[65] For reasons also discussed below, on the evidence before us in this hearing, we do not find that David Kosoy (or by any other person who is a joint actor) exercised control or direction over the securities held by the Sterling Trust.

[66] As set out more fully below, on the evidence put before us, we are unable to conclude that any of the parties to the Support Agreements are "joint actors" within the meaning of Ontario securities laws, except for David Kosoy.

[67] We note that by excluding the votes of David Kosoy (and First National Investments Inc.) from the majority of minority calculation, the votes result as follows: Total of 17,570,386 votes in respect of the Arrangement Resolution, 14,349,686 (81.67%) in favour and 3,220,760 (18.33%) against. Given that, without David Kosoy's Securities, there is a 82% majority of the minority, and having concluded that David Kosoy was a "joint actor", but the other parties to the Support Agreements were not joint actors, and having regard to the cost and time involved in calling another meeting, the exceptionally high shareholder

turnout at the Meeting, and the fact that the Supporting Shareholders are still required to vote in favour of the Going Private Transaction, we see no reason to require Sterling to call a further meeting.

[68] Accordingly, other than the Order, we find that it is not appropriate to grant the relief sought by the Applicants.

V. LAW AND ANALYSIS

A. Minority Approval for Business Combinations under Rule 61-501

[69] Rule 61-501 regulates transactions between, or involving, an issuer and its related party, such as a major shareholder, director or senior officer, who may have a significant conflict of interest or potentially be in a position to benefit from an informational advantage over other security holders of the issuer. These transactions include insider bids, business combinations and related party transactions. Rule 61-501 requires such transactions to have additional protections for security holders of the issuer such as valuation, enhanced disclosure, majority of the minority shareholder approval and special committee consideration to ensure fairness in the transactions to which it relates.

[70] The Commission has described the fairness principles underlying Rule 61-501, and the concerns surrounding the transactions Rule 61-501 regulates, in the introductory paragraphs of the Companion Policy to 61-501 (2004), 27 O.S.C.B. 5975 ("61-501CP"). That provision states as follows:

> 1.1 General - The Commission regards it as essential, in connection with the disclosure, valuation, review and approval processes followed for insider bids, issuer bids, business combinations and related party transactions, that all security holders be treated in a fair manner that is fair and that is perceived to be fair. In the view of the Commission, issuers and others who benefit from access to the capital markets assume an obligation to treat security holders fairly, and the fulfillment of this obligation is essential to the protection of the public interest in maintaining capital markets that operate efficiently, fairly and with integrity.
>
> The Commission does not consider that the types of transactions covered by Rule 61-501… are inherently unfair. The Commission recognizes, however, that these transactions are capable of being abusive or unfair [...]
>
> (61-501CP, *supra* at s. 1.1.)

[71] Part 8 of Rule 61-501 operates as a key procedural safeguard to protect the interests of minority shareholders. Among its other protective aspects, it provides for the determination of who can vote with the minority and reflects the guiding principle that, to the extent possible the minority voting on the merits of the business combination should exclude shareholders whose independence from the controlling shareholder has been or may be compromised.

[72] Pursuant to subsection 8.1(1) of Rule 61-501, a business combination can only be carried out if the issuer obtains minority approval from the holders of each class of the issuer's equity securities. As the Going Private Transaction is a business combination (which is not disputed), Sterling is required to obtain approval of a majority of its minority shareholders pursuant to Rule 61-501.

[73] Subsection 8.1(2) of Rule 61-501 provides as follows:

> (2) Subject to section 8.2, in determining minority approval for a business combination or related party transaction, an issuer shall exclude the votes attached to affected securities that, to the knowledge of the issuer or any interested party or their respective directors or senior officers, after reasonable inquiry, are beneficially owned or over which control or direction is exercised by
>
> (a) the issuer;
>
> (b) an interested party;
>
> (c) a related party of an interested party…; or
>
> *(d) a joint actor with a person or company referred to in paragraph (b) or (c) in respect of the transaction.* [Emphasis added.]

[74] Pursuant to the Policy, for the transaction to be successful, a majority of this minority must vote in favour of the transaction. However, Sterling is required to exclude Sterling securities held or controlled by the Insiders, and persons acting as "joint actors" with them (as defined) in determining which votes are to be counted in the minority for the purposes of approving the Going Private Transaction.

[75] The policy and principles which underlie the "minority approval" requirement were emphasized by Staff in its response to comments received on the then proposed January 2004 amendments to Rule 61-501. Commission Staff stated as follows:

> […] In the case of a business combination, where a majority of security holders can force the minority to relinquish their securities against their will, it is important that this majority be comprised, to the extent possible, of security holders who are voting solely on the merits of the business combination. […]
>
> *(Notice of Proposed Amendments to Rule 61-501 – Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions and Companion Policy 61-501 CP* (2004), 27 O.S.C.B. 550 at 566.)

[76] In its Notice of Amendments to Rule 61-501, while commenting on the nature of the minority approval requirement, the Commission expressed the expectation that those voting have interests which are aligned with those of the minority and as free from conflicts as possible:

> […] when a majority vote of security holders can force the minority to relinquish their securities against their will at a price they may regard as inadequate, it is reasonable to require that the security holders comprising the majority be as free from conflicts of interest as possible so that their interests are aligned with those of the minority.
>
> (*Notice of Amendments to Rule 61-501* (2004), 27 O.S.C.B. 4483 at 4486.)

[77] "Joint actors" is defined in Rule 61-501 as follows:

> "joint actors", when used to describe the relationship among two or more entities, means persons or companies "acting jointly or in concert" as defined in section 91 of the Act, with necessary modifications where the term is used in the context of a transaction that is not a take-over bid or issuer bid, *but a security holder is not considered to be a joint actor with an offeror making a formal bid, or with a person or company involved in a business combination or related party transaction, solely because there is an agreement, commitment or understanding that the security holder will tender to the bid or vote in favour of the transaction*; [Emphasis added.]
>
> (Rule 61-501, *supra* at s. 1.1.)

[78] As set out above, the definition of "joint actor" in Rule 61-501 incorporates the definition of "acting jointly or in concert" under section 91 of the Act and the Commission must therefore look to section 91 in assessing whether the Supporting Shareholders are joint actors under Rule 61-501.

[79] Subsection 91(1) provides that it is a question of fact whether a person or company is acting jointly or in concert with an offeror. However, the section creates some presumptions in certain circumstances, stating "without limiting the generality of the foregoing, the following shall be presumed to be acting jointly or in concert with an offeror:

1. Every person or company who, as a result of any agreement, commitment or understanding, whether formal or informal, with the offeror or with any other person or company acting jointly or in concert with the offeror, acquires or offers to acquire securities of the issuer of the same class as those subject to the offer to acquire.

2. Every person or company who, as a result of any agreement, commitment or understanding, whether formal or informal, with the offeror or with any other person or company acting jointly or in concert with the offeror, intends to exercise jointly or in concert with the offeror or with any other person or company acting jointly or in concert with the offeror any voting rights attaching to any securities of the offeree issuer.

3. Every associate or affiliate of the offeror.

(*Securities Act*, *supra* at subsection 91(1).)

B. Interpretation of "Joint Actors" under Rule 61-501

i) Submissions from the First Capital Group

[80] The thrust of the position advanced by the First Capital Group is that all of the Supporting Shareholders should be excluded from the majority of the minority vote on the basis that they are all joint actors with SCI Acquisition.

[81] While the First Capital Group concedes that support agreements are not improper *per se*, they submit that the effect of the Support Agreements at issue precludes Sterling's shareholders from accepting an offer for their common shares for more

than $1.26 during the term of the Support Agreements, (unless supported by the Insiders). Fundamentally, the First Capital Group argues that this creates a "joint actor" relationship because the Supporting Shareholders no longer have a choice and their interests, therefore, are completely aligned with those of SCI Acquisition.

[82] The First Capital Group submits that the Commission should give a broad, purposive interpretation to the term "joint actor", and apply it in a particular case. The Applicants urge us to find that an agreement between a security holder and an offeror, under which they agree to vote their common shares together, gives rise to a presumption that they are joint actors unless the agreement is *solely* an agreement by the shareholder to vote in favour of the transaction. The First Capital Group, therefore, sees in Rule 61-501, a very narrow exception to the presumption of being a "joint actor" within the meaning of section 91 of the Act. It emphasizes that the purpose of Rule 61-501 is the protection of minority shareholders through ensuring that voting in respect of a business combination is based on the merits of that proposal.

[83] Specifically, the First Capital Group relies on the second part of the "joint actor" definition set out in Rule 61-501, emphasizing the word "solely". It argues that the words "solely […] to vote in favour of the transaction" must be interpreted strictly because they are an exception to the general rule that parties agreeing to vote their common shares together are presumed to be acting jointly or in concert. It argues that if the agreement deals with matters beyond being "solely" an agreement to vote in favour of the transaction, it is outside of the scope of the exception of Rule 61-501.

[84] Referring to the Support Agreements in this matter, counsel points out that while the Support Agreements do include a provision that requires signatories to vote in favour of the Acquisition, its scope is broader. Counsel referred us to section 3.1(c) of the Support Agreements which provides, in part, that the Supporting Shareholders shall vote "against approval of any proposal from any party other than [SCI Acquisition]". Counsel for the First Capital Group submits that this provision is clearly outside the scope of Rule 61-501 because it does not reflect solely a commitment to vote in favour of the Going Private Transaction but, rather, a commitment to vote against any other proposal during the Going Private Transaction, whether or not SCI Acquisition's offer is still on the table.

[85] Counsel also points to other sections of the Support Agreements which go beyond the agreement exception they say is contained in the second part of the "joint actor" definition set out in Rule 61-501:

(a) the Supporting Shareholders are not entitled to accept a superior third-party offer unless the Insiders also agree to do so (s. 2.3);

(b) the Supporting Shareholders grant the Insiders an irrevocable proxy (s. 4.1); and

(c) the Supporting Shareholders are not able to sell or otherwise dispose of their Securities (s. 5.1).

[86] As such the Supporting Shareholders, according to the First Capital Group, are not "entitled" to the "exclusion" provided by Rule 61-501 and therefore are subject to the presumption provided in section 91 of the Act that they are joint actors with the Insiders. Counsel submits that the Supporting Shareholders have failed to rebut this presumption based on the evidence. Counsel also submits that the evidence taken as a whole with respect to the Acquisition Group, the Insiders and the Supporting Shareholders does not rebut, but neither strengthens, the presumption that they are acting jointly or in concert.

ii) Submissions of Staff

[87] Staff point out that an "ordinary" support agreement with identically treated shareholders should not in and of itself generally result in arm's length parties being found to be acting jointly or in concert with the offeror.

[88] However, Staff agree with the submissions of the First Capital Group and urges that the Commission take a very rigorous and narrow interpretation of the phrase "in favour of the transaction" in the "joint actor" definition set out in Rule 61-501. According to Staff, this interpretation follows the policy considerations underlying Rule 61-501, to ensure that the majority be comprised of shareholders who are voting solely on the merits of the transaction, to the extent possible.

[89] In summary, Staff submit that section 91 of the Act creates a presumption that a party to a support or lock-up agreement is a "joint actor" within the meaning of Rule 61-501.

[90] By virtue of Rule 61-501, however, there is no such presumption for a person who is a party to an agreement, commitment or understanding *solely* to tender to the bid or vote in favour of the transaction. However, if the agreement, commitment or understanding *includes* this element, but is broader in scope, the "exception" in Rule 61-501 should not apply. In this regard, Staff seem to agree with First Capital Group as to the interpretation and interaction of Rule 61-501 and section 91 of the Act.

[91] Staff suggest that the first question the Commission must ask itself is whether the Support Agreements fall within the exclusion in Rule 61-501 as they narrowly construe it; that is, are they simply agreements that the Supporting Shareholders will

"vote in favour" of the Going Private Transaction. If the Support Agreements are found merely to be agreements to vote in favour of the Going Private Transaction, the exclusion applies and the Supporting Shareholders would not be considered to be "joint actors" with SCI Acquisition and the Insiders merely because they entered into Support Agreements. If the Support Agreements do not fit within that exception, however, the parties would otherwise be caught by the presumption provided for by section 91 of the Act. However, Staff submit that a further analysis must be completed to determine whether there are facts in the surrounding circumstances which support the conclusion that the Supporting Shareholders were joint actors with SCI Acquisition and the Insiders.

[92] After reviewing the Support Agreements, Staff submit that certain terms, section 3.1(c) of the Support Agreements in particular, are unrelated and extend beyond provisions solely regarding voting in relation to the Going Private Transaction. They illustrate this by way of an example: even if the Going Private Transaction is abandoned and SCI Acquisition chooses not to terminate the Support Agreements, the Supporting Shareholders are still required under section 3.1(c) to vote their Sterling shares "against approval of any proposal from any party other than [SCI Acquisition]". This, in the view of Staff, demonstrates that the Support Agreements go beyond the scope of what was contemplated by Rule 61-501.

[93] As such, Staff submit that the Supporting Shareholders are to be presumed to be acting jointly or in concert with SCI Acquisition and the Insiders pursuant to paragraph 91(1)2 of the Act set out above. The onus is then on SCI Acquisition to rebut the presumption of a joint actor relationship between SCI Acquisition, the Insiders and the Supporting Shareholders.

iii) Submissions from SCI Acquisition

[94] SCI Acquisition submits that the narrow interpretation proposed by the First Capital Group and Staff is not supported by the published policy statements nor in the jurisprudence. SCI Acquisition submits that there is no suggestion in the development of the policy underlying Rule 61-501 that a narrow and rigorous interpretation should be applied. While SCI Acquisition accepts that this interpretation *could* be the correct policy for the Commission to pursue, it nevertheless submits that the development of this policy statement should not follow in the context of this Going Private Transaction. If this interpretation is to be given in this context, there should be commentary, requests for comment and feedback from market participants.

[95] Nonetheless, we did not understand Counsel for SCI Acquisition to have strongly taken issue with the general interpretation of the "joint actor" provisions given by Staff and the First Capital Group. Instead, Counsel emphasizes that under any interpretation of those provisions, the presumption does not apply in this case. The thrust of SCI Acquisition's position is that the operative provisions of the Support Agreements do not convert these agreements into something more than an agreement to vote in favour of the Going Private Transaction.

[96] SCI Acquisition submits that, as a policy matter, the Commission has considered and approved the concept of support agreements and lock-up agreements. It emphasized that there is nothing improper in a party who wishes to complete a transaction seeking to ensure in advance that its transaction will be successful. In addition, SCI Acquisition submits that whether a support agreement is "soft" or "hard" has no bearing on the interpretation of the definition of joint actor (as explained below): if parties are to be held to be joint actors, SCI Acquisition submits that it must be for reasons other than the "hardness" of the Support Agreements. This approach has been endorsed by the Commission and lock-up shares should be counted with the minority, subject to the qualification that the locked-up shareholder:

(a) did not receive consideration per security that is not identical in amount and type to that paid to all other beneficial owners in Canada of affected securities of the same class;

(b) did not receive consideration of greater value than that paid to all other beneficial owners of affected securities of the same class; and

(c) upon completion of the transaction, did not beneficially own, or exercise control or direction over, participating securities of a class other than affected securities.

(*Notice of Proposed Changes to Proposed Rule 61-501 and Proposed Companion Policy 61-501CP Under the Securities Act Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions* (1999), 22 O.S.C.B. 7835 at 7840 ("Request for Comments and Notice of Proposed Changes to Rule 61-501").)

[97] SCI Acquisition submits that a party cannot be a joint actor simply because that party signs a support agreement. Further, as stated, counsel for SCI Acquisition submits that the nature of a support agreement alone cannot make the parties to such an agreement "joint actors". There must be some other evidence to support such a finding. The issue of whether someone is a "joint actor" is fundamentally a question of fact and there must be evidence to support a finding that the parties are acting jointly or in concert. SCI Acquisition relies on the decision of *Drilcorp Ltd. v. Nova Bancorp Investments Ltd. et al.*, No. 0501-02360, March 24, 2005 (Unreported) (Alta. Q.B.) ("*Drilcorp*"), which defined acting jointly or in concert as parties acting together "to bring about a planned result" (*Drilcorp*, *supra* at p. 7). As discussed in more detail below, SCI Acquisition submits that the

evidence falls short of establishing that any of the Supporting Shareholders acted with the Insiders to bring about the planned result.

iv) Submissions from Sterling

[98] Counsel for Sterling supports the submissions of SCI Acquisition. In particular, he submits that, with regard to the specific provisions of the Support Agreements, the words included in section 3.1(c) are merely "suspenders" – additional words to the agreement – which do not change the effect of the Support Agreements. This section says as follows:

> 3.1 Prior to the Expiration Date, at every meeting of the shareholders of [Sterling], however called, at which any of the following matters is considered or voted upon, and at every adjournment or postponement thereof. Shareholder shall, subject, however, to the provisions of Section 2.3, vote or cause the holder of record to vote all of the Shares:
>
> (a) in favour of approval and adoption of the Going Private Transaction and the transactions contemplated thereby;
>
> (b) against approval of any proposal made in opposition to or competition with consummation of the Going Private Transaction;
>
> (c) *against approval of any proposal from any party other than the Acquiror*;
>
> (d) against any action or proposal that is intended to, or is reasonably likely to, result in the conditions of the Corporation's obligations under the Going Private Transaction not being fulfilled;
>
> (e) against any action which would reasonably be expected to impede, interfere with, delay, postpone or materially adversely affect consummation of the transactions contemplated by the Going Private Transaction.
>
> [Emphasis added.]

[99] It is those words in particular that Staff seem to rely upon to support its position that these agreements are more than ordinary support agreements. Sterling submits that the Support Agreements in this case are simply agreements of purchase and sale which include a voting provision providing that the Supporting Shareholders will vote in favour of the Going Private Transaction.

[100] Sterling submits that, in interpreting the Support Agreements, the Commission should consider the factual matrix in which the Support Agreements were drafted, including the commercial reasonableness of the agreements in order to ascertain what the parties truly intended. The Commission must also avoid adopting interpretation which goes against principles of business efficacy. Counsel for Sterling submits that it is inconceivable that the Supporting Shareholders would be precluded from voting on a bid after the Going Private Transaction was terminated. Such an interpretation would be commercially absurd.

[101] In any event, in the course of making submissions, counsel for SCI Acquisition undertook to this Panel that it would never seek to enforce any restrictions on the ability of shareholders to vote for another transaction if the Acquisition Group determined not to proceed with the Going Private Transaction. By doing so, counsel emphasizes that all of the terms of the Support Agreement are intended to only reflect a commitment to vote in favour of the Going Private Transaction.

v) Analysis

[102] The policy underlying the concept of identifying who is a "joint actor" was stated in *Re Sears* as being "to ensure that all persons or companies who are effectively engaged in a common investment or purchase program […] are required to abide by the requirements of Ontario securities laws […]" A determination of a joint actor relationship can be made if the facts establish that the parties in question played an integral role in planning, promoting and structuring the transaction to ensure its success beyond their customary role. (See *Re Sears* (2006), 22 B.L.R. (4th) 267 (Ont. Sec. Comm.) at paras. 149 and 153.) In *Drilcorp*, the Alberta Court of Queen's Bench held that discussions between and among parties did not make them joint actors unless the evidence established that the parties were acting together "to bring a planned result". (See *Drilcorp*, *supra* at p. 7.)

[103] The Commission has recently stated in *Re Sears* that deposit agreements, support agreements, and lock-up agreements are all contemplated by the Act and Rule 61-501 and are not, in and of themselves, objectionable or illegal. (See *Re Sears*, supra at para. 250.)

[104] In fact, lock-up or support agreements are common arrangements used to ensure that holders of significant blocks of shares will vote their shares in support of a plan of arrangement (or tender them to a bid, as the case may be), thus helping to

ensure the success of the transaction. This is not illegitimate or improper, but rather this is the result of a carefully formulated policy that has now been in practice for several years. The *Bingham* case addressed this issue as well, as follows:

> One would think that a shareholder who makes a lockup deal like that must be taken to have been acting jointly with the proponent. However, if you make that assumption and if as a consequence of it, takeover proponents are not allowed vote shares *[sic]* acquired through such agreements, then the assumption could stifle enthusiasm for takeover bids.
>
> And that might not be a good thing: lockup agreements serve a useful purpose -- they can give takeover proponents some certainty that the deals they propose have a chance of success. Absent the comfort and assurance provided by a lockup agreement, fewer takeover bids might be launched; and since takeover bids are not necessarily bad, that could inhibit the fostering of an efficient capital market.
>
> (*Bingham v. Ashton Mining of Canada Inc.*, [2007] B.C.J. 410 (B.C.S.C.) at paras. 51 and 52.)

[105] In order to provide some context to the Commission, Staff explained the distinction between lock-up agreements and support agreements. Support agreements capture agreements in respect of voting shares. Lock-up agreements, on the other hand, are by definition and by custom, agreements to tender shares into a bid. Staff took the position that the agreements at issue in this Application are support agreements because they relate only to voting.

[106] The First Capital Group also argues that in this case, the Support Agreements all contain identical "hard" provisions. In distinguishing whether agreements are "hard" or "soft", Staff referred us to a quote from an article in the McGill Law Journal by Christopher Nicholls, which provides a good description of what these terms mean:

> […] There are two basic modes of lock-up agreement: the "hard" lock-up and the "soft" lock-up. A hard lock-up agreement contains a commitment on the part of the target shareholder to tender his or her shares to the takeover bid that is to be launched by the bidder, provided that the bid price is no lower than the price specified in the lock-up agreement. A soft lock-up agreement would typically contain a conditional commitment by the shareholder to tender to the bid and a covenant not to actively solicit competing offers (i.e., not to "shop" the bid), but would nevertheless have an "out", allowing the shareholder to tender to a higher bid from a third party should one materialize."
>
> (Christopher C. Nicholls, "Lock-Ups, Squeeze-Outs, and Canadian Takeover Bid Law: A Curious Interplay of Public and Private Interests", (2006) 51 *McGill L.J.* 407 at 415.)

[107] Further, the definition of "joint actors" does not distinguish between "soft" and "hard" lock-up/support agreements. It simply excludes from the definition parties that have signed support agreements. The British Columbia Securities Commission explained the difference between what are colloquially termed "soft" and "hard" agreements as follows:

> […] In a soft lock-up agreement, the significant shareholder agrees to tender its share into the bid, but reserves the right to tender its shares into a higher-priced bid should one come along during the time the original bid is in play. In a hard lock-up agreement, the shareholder commits to tender its shares into the bid no matter what. […]
>
> (*Re Stornoway Diamond Corporation*, 2006 BCSECCOM 533 at para. 11; leave to appeal dismissed (2006), 21 B.L.R. (4th) 171 (B.C.C.A.).)

[108] We agree with counsel for SCI Acquisition that whether a support agreement is "soft" or "hard" has no bearing on the interpretation of the expressly carved-out definition of a joint actor. Again, this issue was clearly considered by the Commission in designing Rule 61-501. During the comment period, the Commission posed the following question on this very issue.

> Do you agree that a major shareholder that enters into a *hard and irrevocable lock-up agreement* to support a going private transaction but receives identical consideration to that received by other shareholders *should be entitled to vote its shares as part of the minority* in respect of the going private transaction in all cases? What about a soft lock up? [Emphasis added.]
>
> (Request for Comments and Notice of Proposed Changes to Rule 61-501, *supra* at 7840.)

[109] In its response to the six commentators who addressed this question, the Commission confirmed that its policy was that even shares subject to "hard" lock-up agreements should be counted as part of the minority vote. There should be no aspect of subjectively considering the "hardness" of the support agreement in question:

> *While the Commission recognizes that allowing locked-up shares to be counted may end or preclude an auction*, the Commission continues to believe that the approach taken in the January proposed Rule is the correct one and that locked-up shares should be counted, subject to the qualification that the locked-up shareholder (i) did not receive a

> consideration per security that is not identical in amount and type to that paid to all other beneficial owners in Canada of affected securities of the same class, (ii) did not receive consideration of greater value than that paid to all other beneficial owners of affected securities of the same class, and (iii) upon completion of the transaction, did not beneficially own, or exercise control or direction over, participating securities of a class other than affected securities. *The Commission does not propose to distinguish between hard and soft lock-up agreements*. […] [Emphasis added.]
>
> (Request for Comments and Notice of Proposed Changes to Rule 61-501, *supra* at 7840.)

[110] In order to understand the definition of "joint actors" in Rule 61-501, it is helpful to examine the Commission's historical treatment of lock-up agreements in the context of going private transactions. Under OSC Policy 9.1, the predecessor policy statement to Rule 61-501, the votes of the security holders who had entered into an agreement to support a going private transaction were excluded from the minority if such holder held sufficient securities to materially affect control of the issuer.

> (*OSC Policy Statement 9.1* (1992), 15 O.S.C.B. 2921 ("Policy 9.1") section 2.2.)

[111] In the process of reformulating Policy 9.1 as Rule 61-501, the Commission changed the treatment of shares subject to a lock-up agreement. The Commission explained this change in the context of a going private transaction as follows:

> The Commission is now of the view that shares should not be excluded from the minority for voting purposes, regardless of the level of share ownership of the shareholder or the circumstances in which the shares were tendered or are voted, so long as the shareholder does not (i) receive a consideration that is not available to other holders in Canada of affected securities of the same class, (ii) receive consideration of greater value than that paid to all other holders of affected securities of the same class, or (iii) upon completion of the transaction, beneficially own, or exercise control or direction over, participating securities of a class other than the class of securities subject to the going private transaction.
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> […]
>
> (*Notice of Proposed Changes to Proposed Rule 61-501 and Proposed Companion Policy 61-501CP* (1999), 22 O.S.C.B. 493 (the "1999 Notice") at 494.)

[112] In its response to comments received during the reformulation process, the Commission acknowledged that including shares subject to a lock-up agreement as part of the minority may end or preclude an auction process. The Commission explained the balancing exercise which informed its policy decision as follows:

> Traditionally, the reason for excluding locked up shares has been that lock-up/support arrangements may effectively preclude or severely limit an auction process, thereby removing any practical alternatives from other shareholders.
>
> [A compromise proposal considered by the Commission in 1996] represented a more uniform and flexible approach than that currently in Policy 9.1, as it recognized that disenfranchisement represents a significant imposition on the rights of substantial shareholders whose actions may be of benefit to the minority. It recognized that support/lock-up arrangements generally serve to reduce risk to the offeror who might otherwise be reluctant to make an offer, thereby bringing offers to minority shareholders that might not otherwise appear. In addition, a substantial shareholder can bring to the negotiations a sophisticated and informed party with negotiating power, looking for the best price, whereas the minority have only the opportunity to withhold approval with no certainty of obtaining a better offer. […]
>
> […]
>
> […] In considering how shares held by controlling shareholders should be treated the Commission recognizes that to permit a controlling shareholder to enter into a lock-up/support arrangement without having the subject shares excluded from the minority vote could conceivably lead to situations where the lock-up/support arrangement severely limits or ends an auction process. […]
>
> (1999 Notice, *supra* at 502-503.)

[113] While Staff conclude that certain terms of the Support Agreements extend beyond provisions solely regarding voting in relation to the Going Private Transaction, we do not agree that this is determinative of the issue: the question before us is whether the parties to the Support Agreements are "joint actors" within the meaning of securities laws. Rule 61-501 states that the answer to the question is a question of fact, and not to be answered in the affirmative solely because of the existence of the Support Agreements. Nor do we find that the specific wording of the agreements in question resolves the matter without regard to other facts.

[114] The history of subsection 91(1) and Rule 61-501, in our view, suggests that the presumption in subsection 91(1) must be read in conjunction with the definition of "joint actors" in Rule 61-501. When we do so, we do not agree with Staff or counsel for the First Capital Group that Rule 61-501 creates an exemption, or "safe harbour" from the presumption of being a "joint actor" which only applies to an arrangement which is no more than an agreement, commitment or understanding that the security holder will tender to the bid or vote in favour of the transaction. Nor do we find that that provision does not permit us to consider any party to such an arrangement to be a joint actor. All the words of the section suggest is that "entering into a support agreement" should not be the sole or determining factor in the assessment.

[115] The assessment of whether a joint actor relationship has been established requires a factual analysis based on the plain and ordinary meaning of the words "acting jointly or in concert", informed by the principles of the Act, the Rule and enunciated Commission policy. The facts regarding each Supporting Shareholder must be considered separately for there to be such a determination. (See *Re Sears*, supra at para. 79.)

[116] When determining the nature and scope of agreements and arrangements, the Commission should interpret the words used by the parties themselves by reference to the relevant documents, not by reference to evidence which counsel says was the subjective intention of one of the parties to the agreement. As Staff argue, Commission findings must be based on clear cogent evidence, not ambiguous or speculative evidence; however, reasonable inferences can always properly be drawn from evidence. (See *Investment Dealers Association of Canada v. Boulieris* (2004), 27 O.S.C.B. 1597 (Ont. Sec. Comm.) at paras. 33 and 34; aff'd [2005] O.J. No. 1984 (Div. Ct.).)

[117] Parties cannot be found to be "joint actors" simply because they are counterparties to voting support agreements. The Applicants must establish a joint actor relationship between SCI Acquisition and the Supporting Shareholders on other grounds. As the Commission has stated previously in *Re Sears*: "In the absence of the proverbial 'smoking gun', there must be evidence to support a finding that parties have acted jointly or in concert". (See *Re Sears*, *supra* at para. 79.)

[118] In determining who is or is not a "joint actor", the Commission must look at all of the facts, not only that there is a support agreement, but their terms, any other terms accompanying them, the circumstances surrounding its making, the relationship generally between the party to the bid and the party alleged to be a "joint actor", the conduct of the parties, and any other relevant facts.

[119] We interpret the analysis of whether one is a "joint actor" in light of the interaction of subsection 91(1) and Rule 61-501, as follows:

(1) The language of subsection 91(1) that someone who is a party to *any* "agreement, commitment or understanding", whether formal or informal, *with the offeror* (or any party acting jointly or in concert with the offeror), and by virtue of that, forms the intention to exercise any voting rights attaching to securities of the offeror, gives rise to an evidentiary presumption that the party is a joint actor. The party challenging the vote must first prove that the intention to exercise the voting shares was formed "as a result of" the "agreement, commitment or understanding", to give rise to the presumption. This presumption can be rebutted by evidence;

(2) Rule 61-501 overrides the presumption of acting jointly or in concert with respect to voting arrangements: the fact and existence of "an agreement, commitment or understanding that the security holder will tender to the bid or vote in favour of the transaction" does not result in a finding that a party is a "joint actor", in the absence of other evidence;

(3) The question is one of fact, which will depend on all of the circumstances, not just the existence or the provisions of the agreement;

(4) The nature, scope and breadth of the relevant "agreement, commitment or understanding" (i.e., the obligations go beyond merely tending to the bid or voting in favour of the transaction), may be a relevant consideration to be considered and weighed in considering whether a party is a joint actor. However, notwithstanding the position advanced by counsel for Staff and the First Capital Group, we do not agree that the presence of other commitments or arrangements automatically denies the parties the protection of Rule 61-501 and restores the presumption that they are acting jointly or in concert as contained in subsection 91(1) of the Act.

[120] As the foregoing suggests, we do not accept the narrow interpretation of the word "solely" used in the definition of "joint actor" set out in Rule 61-501 proposed by the First Capital Group and Staff. In our view, their interpretation is not supported by any current published policy statements nor by the jurisprudence. While this novel interpretation *could* be endorsed by the Commission in the future, the development of such an interpretation would amount to a new or revised statement of policy. Although such a view may be sound, the suggested narrowing of this policy should, in our view, be pursued more transparently, through clearly articulated guidance, subject to comment and input of market participants.

[121] The Commission has stated that caution should be exercised where intervention in the public interest would amount to an amendment of existing policies:

> We would also adopt the statement in *Cablecasting* that this is an area in which we "must move with caution". In the great majority of cases, the use of the cease-trade power will be invoked where there is in fact a demonstrated breach of the Act, the regulations or a policy statement. If there is a situation which the Commission believes should be regulated, the appropriate way to proceed is to publish a policy statement in draft form for public comment. In that way, the concerns of the Commission are made known and the policy statement is subject to critique by interested parties. Where a final version is published, it should reflect the best thinking of all the participants in the capital markets, including the Commission.
>
> (*Re Canadian Tire Corp.* (1987), 10 O.S.C.B. 857 (Ont. Sec. Comm.) at 932 aff'd (1987), 59 O.R. (2d) 79 (Div. Ct.).)

As stated, this statement is apposite in the circumstances of this case.

C. Are the Supporting Shareholders or any of them Joint Actors under Rule 61-501?

[122] The First Capital Group takes the position that, as a result of the Support Agreements, the interests of the Support Agreement counterparties are unconditionally joined and aligned with the Insiders, and their interests diverge from those of the independent minority shareholders. As such, the First Capital Group takes the position that there is not one single supporting shareholder who is truly independent from the Insiders or Sterling.

[123] The First Capital Group submits that the effect of the Support Agreements is not merely a permissible hard lock-up, it is an "absolute lock-up" that guarantees for the Insiders the success of the Going Private Transaction irrespective of any superior offer. Furthermore, in the context of an offer by Insiders, who have statutory and fiduciary duties in their capacity as directors and officers of Sterling, the absolute lock-up not only leads to joint actor status for the Insiders and the Support Agreement counterparties, but it operates as a deal protection measure for conflicted Insiders, acting in their capacity as bidders, to protect their offer for Sterling, to discourage other offers from emerging, and to prevent a superior offer from succeeding. As a deal protection measure, the absolute lock-up is both preclusive and coercive.

[124] In contrast, SCI Acquisition and Sterling submit that there is no evidence that any of the Supporting Shareholders received a collateral benefit or preferential treatment in consideration for signing the Support Agreements which would call into question the integrity of their vote in respect of minority approval, or that any of the Supporting Shareholders is a joint actor with SCI Acquisition or any of the Insiders for the purposes of Rule 61-501.

[125] Sterling, in particular, submits that the sole purpose of the Support Agreements make the parties to the Going Private Transaction adverse in interest because SCI Acquisition and the Insiders want to complete their bid at the lowest price and the Supporting Shareholders want the highest possible price for their securities. As such, according to Sterling, the Supporting Shareholders are not acting jointly or in concert with the Insiders, if for no other reason than because their economic interest under the Going Private Transaction is different and the parties have no continuing relationship once the transaction concludes.

[126] Staff take the position that a distinction, in fact, may exist among David Kosoy, and the companies/entities he controls and directs on the one hand, and the other parties to the Support Agreements, on the other. Given the historical involvement of David Kosoy with Sterling and the Bid, we accept that this distinction provides a good framework in which to structure our analysis. However, the approach begs the question "which entities did David Kosoy control or direct at the time he entered into the Support Agreements, if any".

[127] We propose to divide our analysis of the joint actor issue into three different groups of Supporting Shareholders, namely:

(a) David Kosoy and First National Investments Inc. ("First National") (which is admitted to have been controlled by David Kosoy at the relevant time);

(b) the Sterling Trust (which David Kosoy settled); and

(c) the remaining thirteen Supporting Shareholders (the "Remaining Supporting Shareholders").

[128] The First Capital Group submits that, as a matter of fact, David Kosoy is a joint actor with the Acquisition Group. If this is the case, they submit that the votes attached to the Securities over which he has control or direction, should not be counted as part of the "majority of minority" determination. The First Capital Group says that this would include the Securities registered in the name of David Kosoy, First National and Sterling Trust. While there seems to be no dispute that David Kosoy controls the interests of First National, there is no such consensus that he controls or directs the interests of Sterling Trust.

D. Are David Kosoy & First National Investments Inc. Joint Actors under Rule 61-501?

i) Submissions from the First Capital Group

[129] David Kosoy owns or controls 3,841,820 Securities of Sterling making him, on his own, the second largest shareholder of Sterling. The First Capital Group points out that David Kosoy played an integral role in structuring, planning and promoting the Going Private Transaction. David Kosoy is the co-Chairman and co-Chief Executive Officer of Sterling. He is also a director of Sterling.

[130] The First Capital Group emphasizes that David Kosoy is a former member of the Acquisition Group, and only ceased to be a member after being the "point person" on behalf of SCI Acquisition successfully negotiating the price at which the Going Private Transaction would take place. He was also the individual who negotiated the terms of the Support Agreements as a seller. Those negotiations, through his counsel, were finalized when David Kosoy signed the Support Agreement on January 29, 2007. The Support Agreement signed by David Kosoy formed the template used for all the Support Agreements at issue in this Application.

ii) Submissions from Staff

[131] Staff submit that there is evidence on which the Commission could make a finding that David Kosoy has failed to rebut the presumption that he, and the company he controls, First National, are joint actors with the Insiders and SCI Acquisition. Staff make the following observations:

- As part of the Acquisition Group, David Kosoy was instrumental in making the strategic determination that the Going Private Transaction would need to be structured in a manner that made it immune to potential challenges by the First Capital Group. In his position, David Kosoy was privy to information that non-arm's length parties were not. Most specifically, the Acquisition Group's interests in thwarting any bid by the First Capital Group and their intention in this respect in drafting the form of the Support Agreement.

- As a seller, his counsel negotiated a template for the Support Agreements that reflected, in part, the concerns that motivated the Insiders when David Kosoy was part of the Acquisition Group. Unlike the situation in *Drilcorp* (discussed above), David Kosoy and the Insiders intended to bring about a planned result – the thwarting of any proposal from the First Capital Group – and they succeeded in doing that by the terms of the Support Agreements.

[132] As such, Staff submit that circumstances such as these, at a minimum, call into question David Kosoy's independence given his relationship to SCI Acquisition and the Insiders and his interest in the Going Private Transaction.

iii) Submissions from SCI Acquisition

[133] SCI Acquisition submits that the fact that parties had acted jointly or in concert *at one time* in the past, does not mean they continue to do so at the relevant time. Thus, even if David Kosoy had been acting jointly or in concert with the Insiders while he was part of the Acquisition Group, there is no evidence to suggest he continued to so act, after the first week of January 2007 (when he advised them that he would no longer participate as one of the Acquisition Group).

[134] SCI Acquisition submits that while David Kosoy was engaged in discussions settling the purchase price with two large shareholders, Peter Thomas and Peter Schlessinger of Apex Investment Fund were represented by legal counsel, independent of David Kosoy and the Acquisition Group, throughout the negotiations of the Support Agreement and were acting at arm's length from SCI Acquisition. The consideration being paid in the proposed transaction is $1.26 per share and is at the high end of the independent valuation range of GMP. That consideration is being paid to all shareholders of Sterling.

[135] Other than negotiating the initial price with two other shareholders, SCI Acquisition submits that the evidence supports a finding that David Kosoy had no say or involvement in structuring or promoting the transaction: there is no evidence that he was financing the transaction or that he had any intention or motivation to thwart a bid from the First Capital Group. SCI Acquisition agrees that David Kosoy negotiated the document forming the template for the Support Agreements, but it says he did so in his capacity as the largest shareholder of the company and as a seller represented by legal counsel. Moreover, David Kosoy was never an officer or director of SCI Acquisition and he withdrew from the Acquisition Group during the first week of January 2007, prior to the delivery of the first Term Sheet in respect of the proposed transaction to Sterling's Special Committee. As such, SCI Acquisition submits that even if David Kosoy was acting jointly or in concert with the Acquisition Group, he ceased to do so by January such that he was not acting jointly or in concert at the time he negotiated or signed the Support Agreement.

[136] SCI Acquisition submits that David Kosoy swore an affidavit in the context of this proceeding and was cross-examined on its contents. It emphasizes that the First Capital Group never questioned David Kosoy whether he was acting jointly or in concert with SCI Acquisition or the Insiders.

iv) Submissions from Sterling

[137] Sterling submits that the fact that David Kosoy was originally part of the buying group before "switching sides" to become a seller is not a relevant consideration. It submits that there is no previous authority saying that some previous involvement in planning, promoting or structuring an offer will lead to a joint actor status. Counsel for Sterling submits that the Commission must look at the conduct of David Kosoy as a whole. While the evidence suggests that David Kosoy and Peter Thomas discussed the price of $1.26 at an early stage, the negotiations between the two parties broke down and the agreement which was concluded with Peter Thomas several weeks later did not involve David Kosoy. The price of $1.26 was later settled through subsequent negotiations with the Insiders based on the conclusion of the GMP valuation. As such, the evidence shows that David Kosoy on his own did not deliver the votes necessary to ensure the success of the transaction.

[138] Counsel for Sterling points out that, at the time David Kosoy ceased his involvement with the Acquisition Group, he was not involved with the form of the Support Agreements other than as a shareholder who retained counsel to review and advise as to its terms. Sterling submits that negotiating a term of the support agreement does not automatically lead to finding that the parties were acting jointly or in concert.

[139] Sterling also submits that there is no evidence to support that David Kosoy was instrumental in making the strategic decision that the Going Private Transaction had to be structured in a manner that made it immune to potential challenges from the First Capital Group. Counsel for Sterling submits that the company followed all the protective measures set out in Rule 61-501 for the benefit of the shareholders. A Special Committee was formed and retained outside counsel. Sterling submits that the Special Committee fulfilled its fiduciary obligations and its business judgment, which included a finding that it was not likely that a third-party bidder could provide a competitive offer for the company (as reported in the minutes of the Special Committee of September 29, 2006). In addition, David Kosoy was never a director or officer of SCI Acquisition.

v) Analysis

[140] As set out in our discussion above with respect to the nature and implications of the Support Agreements, we are of the view that the fact that David Kosoy is a party to the Support Agreements is not determinative of the question: "was David Kosoy a joint actor within the meaning of Rule 61-501?" We are also unable to accept the proposition advanced by the First Capital Group that basically suggests that "once a joint actor, always a joint actor". We agree with counsel for Sterling that, in the case before us, we must examine all of the facts, and the conduct of David Kosoy as a whole. When we asked Staff counsel, what direct evidence (other than the Support Agreement) is there to support a finding that David Kosoy continued to be a "joint actor", counsel advised that there is no direct evidence – just an inference "from the facts". In light of the seriousness of the result of such a finding, we are of the view that there needs to be more than a mere inference to base that conclusion; we are of the view that, by operation of subsection 91(1) as modified by Rule 61-501, there must be evidence beyond the existence of the Support Agreement, and such evidence must be sufficient, on a balance of probabilities to find that he is a joint actor. However, we do agree with Staff that at a minimum, David Kosoy's circumstances call into question his independence from the Insiders, and this fact calls for a closer examination of his relationship to and role in the bid.

[141] As set out above, David Kosoy is a director of Sterling and, along with Preston, is its co-Chairman and co-Chief Executive Officer; he is therefore an insider to Sterling. He also owns or controls 3,841,820 Securities of Sterling making him, on his own, the second largest shareholder of Sterling. Although David Kosoy has never been a director of SCI Acquisition, David Kosoy was part of the initial group of Insiders who approached Sterling in April 2006 regarding the Going Private Transaction.

[142] In November 2006, David Kosoy participated in the Acquisition Group's decision to approach one or some of Sterling's other large shareholders to ascertain their interest in supporting a Going Private Transaction by SCI Acquisition. Those discussions and negotiations were with Peter Thomas and with Peter Schlessinger of Apex Investment Fund Ltd., two significant shareholders of Sterling whose holdings were second only to David Kosoy's own holdings and those of Sterling Trust. *We agree that David Kosoy, therefore, played an integral role in structuring, planning and promoting the Going Private Transaction prior to his decision to become a seller and, therefore, a supporting shareholder under the Going Private Transaction.*

[143] After David Kosoy decided to leave the Acquisition Group, he had some discussions with the Insiders about his role, if any, with Sterling after the completing of the transaction. The discussions also included whether he would be terminated as an employee of Sterling and be paid the termination payment (approximately $2 million) outlined under his employment agreement with Sterling. The evidence on the issue indicates that no agreement was made regarding the payment of any termination amount. The possibility of a termination payment was also considered by the Special Committee and GMP in conjunction with the valuation of Sterling. The understanding of the Special Committee was that there was no agreement to make such a payment to David Kosoy. However, in discharging its obligations, the Special Committee asked GMP to consider the possibility of any such payment into its financial analysis. In the end, no aspect of the GMP valuation or fairness opinion is based on any payment being made.

[144] Counsel for SCI Acquisition spent a great amount of time in his submissions to emphasize that there is no evidence that David Kosoy's conduct was inappropriate, or abusive, and that there is no evidence that David Kosoy received any collateral benefit. We agree.

[145] We do not see any evidence in the record that David Kosoy acted improperly or that his decision to cease participation in the Acquisition Group was motivated by anything other than proper considerations.

[146] Nonetheless, we agree with the submissions of Staff, which were supported by the First Capital Group; in Staff's view, where a supporting shareholder: (i) who is an insider of the target company; (ii) was previously part of the Acquisition Group; (iii) was involved in the decision to obtain support from minority shareholders; (iv) who negotiated the price of the offer; and (v) who switched sides shortly after negotiating the terms of the offer, a serious question arises as to whether that shareholder can cease to be a "joint actor" in the context of the transaction once that shareholder has moved from the Acquisition Group to the selling group. As Staff say in their written submissions, "this is especially the case when the transaction involved is a transaction that has been proposed by insiders and that would result in the expropriation of the shares held by minority shareholders."

[147] As a matter of policy, we are particularly sensitive to the concerns raised by the First Capital Group and Staff regarding an insider's ability to simply declare himself/herself "independent" of an insider group without regard to the history of his/her involvement and the circumstances. In the case before us, we note the short time that elapsed between David Kosoy's "declaration of independence", and the consideration of whether he is a "joint actor" for the purposes of the transaction. While we agree that the length of the time frame is not determinative of the issue, we do believe it to be a relevant consideration, particularly in this case.

[148] On the evidence, we find all of the facts enumerated above in paragraph 146 to apply in the circumstances of David Kosoy. In all of the circumstances, for the reasons set out above, we find that David Kosoy, and therefore First National which is admitted to be controlled by him, was and remains a "joint actor" with the Insiders in respect of the Going Private Transaction.

E. Is the Sterling Trust a Joint Actor under Rule 61-501?

[149] Having concluded that David Kosoy (and First National) are joint actors with SCI Acquisition and the Insiders, we must now determine whether the Sterling Trust is also a joint actor, the votes of which should be excluded from the minority.

[150] In our view, the issue comes down to the question of whether David Kosoy exercised direction and control over the Sterling Trust at the relevant time (being the entering into of the Support Agreement).

i) Submissions from the First Capital Group

[151] The First Capital Group submits that David Kosoy did in fact control the Sterling Trust. Their counsel points to at least four facts that reinforce the conclusion that David Kosoy and the Sterling Trust were acting together and ought to be treated by the Commission as acting jointly or in concert. First, the First Capital Group says that the Memorandum of Agreement entered into by the major shareholders who founded Sterling in March 2001 includes the Sterling Trust as a party under the definition of the "Kosoy Group".

[152] Second, the First Capital Group relies on David Kosoy's acknowledgement in the Sterling Management Information Circular dated April 24, 2006, that he considers himself to "act jointly and in concert with the Sterling Trust".

[153] Third, the First Capital Group points to the correspondence relating to Sterling Trust's execution of the Support Agreement. Counsel referred us to a series of emails amongst SCI Acquisition, Brian Kosoy, David Kosoy and Martin Middlestadt, David Kosoy's counsel, in which Brian Kosoy asks for David Kosoy's executed Support Agreement and, at the same time, requests that David Kosoy forward a copy of the Support Agreement to the Sterling Trust for execution. This email correspondence continued between January 29th and February 6, 2007. Finally, on February 6th, David Kosoy wrote to Susan Fairhurst, Sterling Trust's trustee, asking her to sign the Support Agreement. Brian Kosoy was ultimately provided a copy of the Support Agreement executed by the Sterling Trust from David Kosoy's counsel on February 7th. All of the correspondence went on between David Kosoy and the Sterling Trust. The First Capital Group submits that this evidence leads to only one of two possible conclusions: either the Support Agreement was signed at David Kosoy's direction or, at a minimum, David Kosoy ensured that the document would be executed.

[154] Finally, the First Capital Group refers us to a document produced by SCI Acquisition which shows a list of shareholders who own or control more than 1,500 Securities of Sterling, and which shareholders entered into the Support Agreements with SCI Acquisition. The document shows the initials of David Kosoy beside Sterling Trust. The First Capital Group submits that this evidence suggests that SCI Acquisition regarded David Kosoy and the Sterling Trust as being aligned in interest.

ii) Submissions from Staff

[155] Staff submit that in circumstances where David Kosoy has taken the position in Sterling's publicly filed documents that he is acting jointly and in concert with the Sterling Trust, this position should be accepted for the purposes of the Going Private Transaction, regardless of the legal status of the trust, the identities of the trustee and protector, and who might have legal control or direction over the affairs of the trust. Staff submit that the Sterling Trust has failed to rebut the presumption that it is a joint actor with the Insiders and SCI Acquisition.

iii) Submissions from SCI Acquisition

[156] SCI Acquisition disputes the position put forward by the First Capital Group and Staff, and asserts that the Sterling Trust is a legitimate legal entity independent of David Kosoy. It points out that the Sterling Trust is a Cook Islands asset protection trust settled by David Kosoy on January 29, 1997, which owns 3,406,971 Sterling Securities. The beneficial owners of the Sterling Trust are the wife of David Kosoy, her son, and David Kosoy's two sons, but the beneficial interest is entirely discretionary in the hands of the protector and the trustee. The trustee is a professional trustee named Susan Fairhurst and the protector is Phillip Kosoy, David's brother. No distributions have ever been made from the trust.

[157] Contrary to the First Capital Group's suggestion, SCI Acquisition emphasizes that there is no evidence that David Kosoy exercises control or decision-making power in respect of the Sterling Trust. SCI Acquisition referred to the affidavit of Robert Green, where David Kosoy is described as having "no involvement in or control over the affairs of the trust pursuant to the requirements of such a trust, and exercises no control or decision-making power in respect of the trust's execution of a support agreement".

[158] While the Management Information Circular states that David Kosoy "acts jointly and in concert with the Sterling Trust", SCI Acquisition submits that the Circular does not say that he considers himself to be a "joint actor". The takeover bid circular issued in the context of the Going Private Transaction does not contain the same disclosure statement made in the earlier document that David Kosoy considers himself a joint actor with the Sterling Trust, and the statement ought to be seen in the context in which it was made, according to these submissions.

[159] In addition, SCI Acquisition's counsel submits that the fact that the Sterling Trust is mentioned under the definition of the "Kosoy Group" in the Memorandum of Agreement that was entered into among the controlling shareholders of Sterling in 2001 is hardly determinative of the matter. Even if Sterling Trust was within the Kosoy Group for the purposes of that and any other circular, it does not mean that the Sterling Trust is a joint actor with David Kosoy for purposes of the Going Private Transaction. (SCI Acquisition also mentioned that the Memorandum of Agreement has since expired February 1, 2007, and is no longer in force.)

iv) Submissions of Sterling

[160] Sterling supports the submissions of SCI Acquisition and submits that David Kosoy, as settler of the Sterling Trust, has no involvement in or control over the affairs of the trust and exercised no decision-making power in respect of the trust's execution of the Support Agreement and that there is no evidence in this regard to the contrary. He emphasizes that the Sterling Trust is run by a professional trustee, Susan Fairhurst, who signed the Support Agreement.

[161] Counsel for Sterling referred to various provisions of the Deed of Settlement that demonstrate that the Sterling Trust was acting as an independent actor. In particular, clause 46 of the Deed of Settlement provides that the Sterling Trust is an irrevocable settlement. Clause 8(c) of the Deed of Settlement provides that the power to sell resides in the professional trustee Susan Fairhurst, not David Kosoy as beneficiary. The evidence with respect to David Kosoy's involvement in getting the Support Agreement signed does not amount to a finding that he was a joint actor, according to counsel for Sterling. Counsel for both Sterling and SCI Acquisition point out that the First Capital Group had the opportunity to cross-examine David Kosoy but did not ask any questions regarding his involvement with the Sterling Trust.

v) Analysis

[162] We are of the view that if the evidence supported a finding that David Kosoy had direction or control over the Sterling Trust, we would hold that the Securities of Sterling Trust should be excluded from the "majority of the minority" calculation given David Kosoy's characterization as a "joint actor". However, in this case, on the evidence before us, we are unable to make that finding. In approaching this question, we need to consider the trust documentation, as well as all evidence relating to the manner in which decisions of the Trust were made and the business of the Trust conducted. Like the very question of who or what are "joint actors", the question of whether David Kosoy controls or had direction over the affairs of Sterling Trust is a question of fact. (See *Re Rogers*, [1929] 1 D.L.R. 116 (Ont. C.A.)). Professor Waters has succinctly put the matter this way: "The test is really an objective one. Has the settler reserved such a degree a control over the trust property during his lifetime that the trustees are merely his agents?" (See Waters, Gillen and Smith, *Waters' Law of Trusts in Canada*, 3d ed. (Toronto: Thomson Carswell, 2005) at p. 210). Based on the evidence in the record, we answer "no" to this question.

[163] The Deed of Settlement of the Sterling Trust provides that the power to sell shares resides in the professional trustee. The relevant provisions read as follows:

> Powers of Investment, Acquisition and Sale
>
> 8. (a) The Trustees, with the consent of the Protector, shall have power to invest the Trust Fund in the purchase of any investment including any shares, stocks, funds, securities, policies of insurance, bank accounts, time deposits, annuities, mutual funds, partnerships, reversionary or other interests, or property, movable or immovable, of whatsoever nature and wherever situated and whether or not productive of income and whether involving liability or not or upon such personal credit, with or without security, in all respects as the Trustees shall, in their discretion, think fit.
>
> 8. (b) The Trustees, with the consent of the Protector, shall be under no duty to diversify investments and shall have power to accept or acquire and to retain any assets subject to this Settlement, even though the assets may be producing no or insufficient income or may be of a wasting nature or may consist of shares, securities or interests in a single company or partnership.
>
> 8. (c) The Trustees, with the consent of the Protector, shall have power at any time to sell, concert, or call in any investments.
>
> 8. (d) The Trustees, with the consent of the Protector, shall have power to apply any money in making improvements to or otherwise developing or using any land or buildings or in erecting, enlarging, repairing, decorating, making alterations to or improvements in, or pulling down and rebuilding any buildings (but so that the Trustees shall be under no obligation to repair, decorate, improve, alter or rebuild any such buildings).
>
> 8. (e) The Trustees, with the consent of the Protector, shall have power to lease, let, license, mortgage or grant tenancies and to accept surrenders of leases, tenancies, and licenses, and to enter into and carry into effect any grants, agreements, or arrangements relating to and generally to manage and deal with any land or buildings.
>
> […]
>
> 31. (a) Subject to any express provision affecting the same, every discretion vested in the Trustees (except as requiring the consent of the Protector) shall be an absolute and uncontrolled discretion and the Trustees shall have an absolute and uncontrolled discretion in deciding whether or not to exercise any such power and no Trustee shall be under any duty to enquire as to the means or needs of any Discretionary Beneficiary, whether such Discretionary Beneficiary is a minor or a person under some disability or otherwise. In the event any Trustee shall have knowledge of such special circumstances, the Trustees shall not be under any duty to take this into account when exercising or not exercising any powers under this Settlement.
>
> (Deed of Irrevocable Settlement of the Sterling Trust dated January 29, 1997)

[164] As regards the execution of the Support Agreement by Sterling Trust, we see nothing particularly unusual in terms of how the matter was dealt with, and nothing inconsistent with a finding that the Sterling Trust and David Kosoy were not "joint actors". The evidence is clear that Brian Kosoy asks for David Kosoy's executed Support Agreement and, at the same time, requests that David Kosoy forward a copy of the Support Agreement to the Sterling Trust for execution. David Kosoy wrote an email on February 6th, 2007 to Susan Fairhurst, asking her to sign the Support Agreement. She signed the document the same day and provided an executed copy of the Support Agreement to David Kosoy's counsel the same day.

[165] We are advised that David Kosoy as settler, has no involvement in or control over the affairs of the trust pursuant to the requirements of such a trust, and exercised no control or decision-making power in respect of the trust's execution of a Support Agreement. There is no evidence to the contrary. In addition, Sterling Trust's Support Agreement was signed by Susan Fairhurst as trustee.

[166] On the evidence before us, David Kosoy appears to exercise no control or decision-making power in respect of the Sterling Trust. Counsel for the Applicants chose not to cross-examine David Kosoy on this issue. Further, on the evidence before us, there does not appear to have been any agreement or understanding between the Sterling Trust, the Insiders or SCI Acquisition in existence other than its Support Agreement. Nor did we find evidence of any such agreement or understanding between Sterling Trust and David Kosoy and/or First National.

[167] We have no reason, on the evidence before us, to consider that Sterling Trust was controlled by David Kosoy, and/or the Support Agreement was signed by the Trustee at the direction of David Kosoy. As stated above, we have concluded, on the evidence, that David Kosoy was, in fact, acting as a joint actor within the meaning of section 91 and Rule 61-501. As such we do not see it as unusual that he would be involved in facilitating the execution of the Support Agreements on behalf of the offeror.

However, there is no evidence that his role was anything other than that and there is no evidence of impropriety with respect to the legal structure of the trust.

[168] Accordingly, having found the Sterling Trust is *not* subject to the control and direction of David Kosoy, the question of whether Sterling Trust is a "joint actor" must be determined on other factors, and we consider those factors, as they relate to the other Supporting Shareholders below.

F. Are the Remaining Supporting Shareholders Joint Actors under Rule 61-501?

i) Submissions from the First Capital Group

[169] The First Capital Group submits that the Support Agreements are being improperly used as deal protection measures by the Insiders: by gaining absolute control over the Securities of the Supporting Shareholders, the Insiders intended to inhibit an auction and guarantee that a superior proposal could not succeed without their consent. Counsel relies on the affidavit of Robert Green, in which, he deposes that the Acquisition Group was very concerned that the First Capital Group might attempt to interfere with the proposed Going Private Transaction and upset the transaction by attempting to acquire common shares of Sterling not owned by the Insiders once any such transaction was announced. Counsel for the First Capital Group requests that we consider the Support Agreements within that context.

[170] As described above, nine of the Remaining Supporting Shareholders are employees or former employees of Sterling, and eight of the current Remaining Supporting Shareholders hold senior management positions with Sterling and report to certain of the Insiders. The First Capital Group submits that these employees did not negotiate the price offered for their Securities, nor did they negotiate any of the other terms of the Support Agreements.

[171] Counsel referred us to the cross-examination of Marcus Bertagnolli, Sterling's Vice-President Real Estate Finance. According to that evidence, the first time Marcus Bertagnolli was provided with a copy of the Support Agreement was as an attachment to a one-line e-mail from John Preston, his superior, directing him to sign the Support Agreement and forward it to Brian Kosoy. Counsel submits that the evidence produced by Sterling and SCI Acquisition is consistent with Marcus Bertagnolli's evidence – the employees were approached and signed their respective Support Agreements in similar circumstances to the one-line directive received by Marcus Bertagnolli.

[172] The First Capital Group further submits that the timing of the Support Agreements, in a number of cases, reinforce the argument that the agreements were not negotiated fully on the merits of the Going Private Transaction. On February 8, 2007, Sterling issued a press release stating that it had entered into an agreement with SCI Acquisition to effect a business combination. Sterling issued a second press release on February 23, 2007, to indicate that it had achieved a sufficient number of votes through the Support Agreements to approve the Going Private Transaction. However, three employees, Vincent Costello, Russell Watson and Chris Chamberlain signed their Support Agreements after the February 23rd press release. Counsel submits the these employees failed to receive consideration in circumstances where the approval of the Going Private Transaction was a foregone conclusion. These facts, according to counsel, strengthen the presumption that the employees are acting jointly or in concert with SCI Acquisition and the Insiders.

[173] The First Capital Group also refers to a second group of Supporting Shareholders who are not Sterling employees, but have business connections with either Sterling or the Insiders or both:

- Kimco Realty Corporation is an ongoing business partner with Sterling, including in one of Sterling's most valuable real estate assets (the Mall of the Americas).
- Peter Thomas was the founder of Sterling's predecessor, Samoth Capital Corporation.
- Apex is owned or controlled by Peter Schlessinger, long time friend and business partner of David Kosoy. Schlessinger is also a limited partner with Sterling or its subsidiaries in a number of business ventures.
- Erlbaum Family Limited Partnership is owned or controlled by Gary Erlbaum, another long time friend and business partner of David Kosoy. Like Apex, Gary Erlbaum or the Erlbaum Family Limited Partnership have been investors with Sterling or its subsidiaries in various business ventures.

ii) Submissions from Staff

[174] Staff submit that the Remaining Supporting Shareholders are *presumed* to be joint actors by reason of the Support Agreements (because the Support Agreements go beyond being "solely" an agreement in respect of voting, and therefore not within the "exception" of Rule 61-501, as discussed above). Staff submit, however, that the record did not disclose overwhelming evidence which would suggest that there were overt acts for anything that would suggest that the Remaining Supporting Shareholders were acting jointly or in concert with SCI Acquisition.

[175] Although the evidence suggests that Peter Thomas and Peter Schlessinger of Apex both negotiated the price at which the Sterling Securities would be acquired, Staff submit there is no evidence that the Remaining Supporting Shareholders would not have been satisfied with an "ordinary" support agreement that did not have the effect and purpose that the terms of the Support Agreements do in this case. These shareholders accepted the agreements as they were given to them.

[176] According to Staff, the allegations advanced by the First Capital Group that some Supporting Shareholders had business relationships and friendships with the Insiders are not enough to establish that the Remaining Supporting Shareholders were acting jointly or in concert. Staff indicated that they merely signed the Support Agreements and that there is no other evidence which would suggest that the Remaining Supporting Shareholders were acting jointly or in concert with SCI Acquisition and the Insiders.

iii) Submissions from SCI Acquisition

[177] In response to the allegations of the First Capital Group, SCI Acquisition submits the following:

- Kimco Realty Corporation ("Kimco") has certain business ventures with Sterling but has none with the Insiders or with SCI Acquisition. Kimco has an agreement with SCI Acquisition which relates to the early redemption of the Sterling convertible debentures held by Kimco. The early redemption of the debentures is a necessary condition of completing the Going Private Transaction, and was agreed to by two other convertible debenture holders who own an aggregate of 60% of the debentures and who did not sign Support Agreements. Kimco had independent legal representation throughout.

- Apex Investment Fund Ltd. is not currently a partner or investor with Sterling. It is solely a shareholder of Sterling. There is no agreement or understanding between Apex, the Insiders or SCI Acquisition in existence other than its Support Agreement.

- Peter Thomas was represented by legal counsel throughout the negotiations of the Support Agreement with SCI Acquisition and was clearly acting at arm's length from SCI Acquisition. The fact that he was a founder of a predecessor company of Sterling does not put him in any position of conflict. There is no agreement or understanding between Peter Thomas and either the Insiders or SCI Acquisition in existence other than his Support Agreement.

- Erlbaum Family Limited Partnership is owned and controlled by Gary Erlbaum, a long time friend and business partner of David Kosoy. Like Apex, Gary Erlbaum of the Erlbaum Family Limited Partnership have been investors with Sterling or its subsidiaries in various business ventures but has no ongoing interests with Sterling other than as shareholder. There is no agreement or understanding between Erlbaum Family Limited Partnership and either the Insiders or SCI Acquisition other than the Support Agreement.

- Henry Bereznicki is a co-owner with Messrs. Preston and Green of a small strip mall in Edmonton. It is currently under firm contract for sale to a third party. There is no agreement or understanding between Henry Bereznicki and either the Insiders of SCI Acquisition in existence other than this and his Support Agreement.

[178] According to SCI Acquisition's submissions, there is no basis on which to find that Peter Thomas decided to support the proposed transaction in exchange for anything other than the opportunity to receive the same consideration being paid to all shareholders. Peter Thomas was represented by legal counsel throughout the negotiations of the Support Agreement with SCI Acquisition. The fact that he was a founder of a predecessor company of Sterling does not put him in any position of conflict, *per se*, in our view.

[179] With respect to the Remaining Supporting Shareholders who are employees of Sterling or one of its subsidiaries, SCI Acquisition submits that the mere fact that such employees may continue to be employed after the Going Private Transaction is insufficient to establish that they are acting jointly or in concert with SCI Acquisition or the Insiders. There is no suggestion that any employees of Sterling received collateral benefits and there is no agreement with respect to the continued employment of any of these individuals.

iv) Submissions from Sterling

[180] Sterling submits that Peter Thomas is a sophisticated investor who bargained hard for the price he was trying to obtain for his Securities. Counsel for Sterling indicates that Peter Thomas was successful in negotiating a higher purchase price and he requested to review the GMP valuation report in order to be satisfied that the bid price was within the valuation range. Peter Thomas also tried unsuccessfully to obtain a $250,000 break fee from SCI Acquisition if the Going Private Transaction was not concluded. There is therefore no evidence that Peter Thomas was given or is entitled to receive preferential treatment in order to obtain his support for the Going Private Transaction.

[181] Relying on the affidavit of Robert Green, Sterling submits that "none of the [Supporting Shareholders] have been promised or received any side agreements, understandings or benefits in consideration for entering into the [Support Agreements]".

[182] Finally, Sterling submits that the First Capital Group has offered nothing other than speculation and innuendo in support of their assertion that the Supporting Shareholders are joint actors with SCI Acquisition. Counsel for Sterling referred us to the following passage in *Re Kosomoto*, a decision of the Alberta Securities Commission:

> … we consider the comment of Nordheimer, J. in *R. v. Rankin*, [2006] O.J. No. 4579 (at para. 58) to be apt notwithstanding the considerably higher standard of proof applicable to that proceeding: "Suspicion is simply speculation by another name. It can never be elevated to the very high standard of proof beyond a reasonable doubt". *Neither mere plausibility nor suspicion satisfies even the lower balance of probabilities standard applicable to the present proceeding*. [Emphasis added.]
>
> (*Re Kusumoto*, 2007, ABASC 40 (Alta. Sec. Comm.) at para. 91.)

v) Analysis

[183] We have previously concluded that joint actors are intimately involved in structuring, planning and promoting the Going Private Transaction and not solely signatories to a support agreement. We agree with the submissions of SCI Acquisition, that the First Capital Group has filed no evidence, and has not otherwise provided any cogent basis for us to find that any of the Remaining Supporting Shareholders are found acting jointly or in concert with the Insiders at the relevant time. The mere fact that parties had personal or business relationships in the past does not render them joint actors within the meaning of Rule 61-501.

[184] We do not agree with Staff that the Supporting Shareholders are presumed to be joint actors by reason of the Support Agreements, as we have discussed above. As stated, Rule 61-501 requires that there be more evidence than merely the existence of the Support Agreements to ground a finding that parties to them are acting "jointly and in concert" as joint actors. Here, unlike with David Kosoy, there is no evidence that the Remaining Supporting Shareholders had any specific interest in allowing the Insiders and SCI Acquisition to thwart a First Capital Group proposal. Although the evidence suggests that Peter Thomas and Schlessinger/Apex both negotiated a price at which the Sterling Securities would be acquired, there is no evidence that the Remaining Supporting Shareholders would not have been satisfied with an "ordinary" support agreement that did not have the effect and purpose that the terms of the Support Agreements do in this case. These shareholders accepted the agreements as they were given to them.

[185] As well, we find no evidence of the existence of "any agreement, commitment or understanding, whether formal or informal" between David Kosoy or First National, on the one hand, and any of the other Supporting Shareholders (including Sterling Trust).

[186] We agree with Staff's submission (and that of the other responding parties) that there is no cogent evidence to support a finding that any of the Remaining Supporting Shareholders intended the Support Agreements to be "auction inhibiting", generally, and specifically as it relates to the First Capital Group. But, as counsel for the First Capital Group properly points out, we must carefully review the evidence of the circumstances and events surrounding the entering into of the Support Agreements, as well as the terms themselves. As pointed out by First Capital's counsel, beyond voting in favour of the Going Private Transaction (and against any other transaction in opposition to the Going Private Transaction), there are voting provisions in the Support Agreements which survive the termination of the Going Private Transaction. However, we find insufficient evidence on which to base any finding that the Remaining Supporting Shareholders had any interest in the outcome of the vote independent of their role as shareholders, nor any evidence that, in fact, they were working jointly and in concert with the Insiders to effect their desired outcome.

G. What is the Appropriate Remedy?

i) Submissions from the First Capital Group

[187] The First Capital Group has brought this Application on the basis that the Circular provided to shareholders before the Meeting did not disclose adequate information about the Support Agreements in connection with the Going Private Transaction: the identities and interests of the Supporting Shareholders; the terms of the Support Agreements; or the intentions of the Insiders with respect to accepting an alternative offer for Sterling. In response, they ask the Commission to exercise their jurisdiction under sections 104 and 127 of the Act.

[188] First Capital requests a broad remedy to redress what it says is an unjustified restriction into the auction process. Counsel for SCI Acquisition correctly observes that the effect of the order sought is to require Sterling to call and hold a new

special meeting, which would follow a revised disclosure. First Capital states that a remedy which merely excludes the impugned votes would be insufficient. First Capital says as follows:

> (a) "First, it disregards or minimizes the effect the respondents' disclosure may have had on the result of the vote. Since at least February 23, 2007, Sterling has stated publicly: (1) that the votes of the Support Agreement counterparties would be counted as part of the minority for purposes of majority of the minority approval and (2) that the result of the vote was a foregone conclusion. In the fact of these statements, it is simply not possible to take any comfort in the voting. Nor, is it an answer to point to the dissent rights available to minority shareholders. There is a significant economic cost to exercising these rights; a cost which is not justifiable for parties holding relatively few Securities. In this respect, the Applicants are in a materially different position.
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> […]
>
> (b) Further, the argument overstates the fact that the Arrangement Resolution was passed by the thinnest of margins. In the case of the vote of all Securityholders, excluding the votes of the Support Agreement counterparties, the result was only 53% in favour of the Going Private Transaction. In the case of the vote of the common shareholders, the result was even closer (50.1% vs. 49.9%).
>
> (c) Finally, it ignores the timing of the Meeting relative to the announcement by First Capital of its takeover bid and attempts to adjourn the Meeting in order to afford shareholders more time in which to consider that bid.
>
> […]
>
> (d) The First Capital Group therefore submits that the Commission should make an order under section 104 requiring Sterling to: (1) comply with Rule 61-501 by excluding from the calculation of the majority of the minority securities of Sterling held by SCI Acquisition's joint actors; and (2) make proper disclosure of the Support Agreements and SCI Acquisition's intentions with respect to any competing proposal. Further, it is submitted that the Support Agreements engage the Commission's public interest jurisdiction and warrant intervention in the Going Private Transaction, which should be cease traded until the requested section 104 order has been complied with."

[189] Relying on *Re Sears*, the First Capital Group submits that in order to give effect to the purposes of Rule 61-501, the appropriate remedy should include amending the takeover bid circular and/or the management information proxy circular to expressly state which securities would be excluded from the minority for the purposes of meeting the majority of the minority requirement. The First Capital Group submits that appropriate disclosure is essential in the case in order to not undermine the purpose of compliance with Rule 61-501. As such, the First Capital Group requests that a new circular be distributed to Sterling's shareholders in order for the true minority of Sterling to evaluate the merits of the Going Private Transaction.

[190] The First Capital Group submits that the remedies requested are suitable and appropriate in light of the circumstances surrounding SCI Acquisition's proposed Going Private Transaction. The remedies sought are not punitive but are intended to ensure the protection of all minority shareholders of Sterling and the preservation of public confidence in Ontario's capital markets.

ii) Submissions from Staff

[191] Staff submit that the Commission must be mindful that any remedy it orders must be connected to and proportionate to the alleged wrong. Staff submit that proper disclosure is particularly important when it comes to the integrity of a vote in a majority of a minority context. In the context of this Application, Staff express concerns about the lack of disclosure and the impact it may have had during the majority of the minority vote to approve the Going Private Transaction, if it is found that the votes of all, or certain of the Supporting Shareholders ought to have been excluded from the "minority of the majority" calculation.

[192] In the event that the Commission determines that a sufficient number of Sterling Securities held by the Supporting Shareholders have to be excluded so that the Insiders and SCI Acquisition no longer have a majority of minority support guaranteed under the Support Agreements, Staff submit that it would open to the Commission to cease trade the Going Private Transaction so that the "true" minority shareholders would have proper disclosure of the new circumstances and an ability to make a voting decision based on those facts. However, the predominant responsibility of the Commission is to determine what is the appropriate remedy in the circumstances.

iii) Submissions from SCI Acquisition

[193] SCI Acquisition highlighted for the Commission that 92.2 percent of the issued and outstanding Securities of Sterling were represented in person or by proxy at the Meeting held on April 30th. With respect to section 104 of the Act, SCI Acquisition submits that issuing a revised circular and holding a new vote is unnecessary. If the Commission finds that Supporting Shareholders should be removed from the minority, SCI Acquisition submits, in the circumstances where the vote has already been held, that it is entirely appropriate for the Commission to accept the results of the vote that has already occurred and remove the conflicted votes from the minority.

[194] With respect to section 127 of the Act, SCI Acquisition submits that unlike the Commission's findings in *Re Sears*, there is no allegation of abusive or reprehensible conduct on the part of SCI Acquisition or any of the Insiders. Although the Commission's public interest jurisdiction under section 127 of the Act is very broad, SCI Acquisition submits that this jurisdiction is meant to rectify clear breaches of the Act, regulations or policy statements, abusive conduct and other inappropriate behaviour. A showing of abuse is something different from, and goes beyond, a complaint of unfairness. SCI Acquisition submits that an order in this Application such as the one issued in *Re Sears* would offend the principles of proportionality.

[195] SCI Acquisition also submits that the Commission should consider the First Capital Group's motivation as a bidder, given its antagonistic relationship with Sterling. They were both shareholders of Sterling, owning approximately 3 percent of the company as at February 8, 2007, and they acquired almost 2 million common shares of Sterling since the Going Private Transaction was announced. The First Capital Group has tripled their holdings of Sterling since the Going Private Transaction was announced and they account for nearly 80 percent of the trading since February 8th. By bringing this Application, SCI Acquisition submits that the First Capital Group attempted to squeeze the size of the minority into a very small number of shareholders that they would dominate, putting them in a position to defeat the Going Private Transaction. As such, they do no represent the true minority shareholders.

[196] SCI Acquisition finally submits that the First Capital Group has a statutory right of dissent provided under s. 185 of the OBCA under the terms of the interim order and the Arrangement Agreement. Any arguments relating to the Going Private Transaction and any breach of fiduciary duties by the Insiders can be advanced at the fairness hearing which was scheduled for June 8, 2007, later rescheduled for June 15, 2007. The First Capital Group has filed Notices of Appearance in that proceeding and have indicated that they intend to oppose the approval of the Plan of Arrangement on the basis that it is unfair.

iv) Submissions from Sterling

[197] Sterling supports the submissions and position of SCI Acquisition Group. Sterling, among other things, submits that adequate disclosure of the Support Agreements was made in the Circular and much of the information at issue in this Application was in fact contained in the Circular. With regard to the balance of the information (in particular the future intentions of the Insiders with respect to accepting an alternative offer for Sterling), Sterling submits that this information lacks materiality in the sense that a reasonable shareholder would not consider it important in deciding how to vote.

[198] Sterling emphasizes that the Commission's "public interest jurisdiction" ought to be exercised cautiously and in appropriate circumstances. In this case, it asserts that there is no "unfairness" here, no evidence of joint actorship, collateral benefits, differential or preferential treatment or any breach of law. There is nothing "coercive" or "abusive" to engage section 127.

v) Analysis

[199] Pursuant to subsection 104(1), the Commission may make an order directing any person or company to comply with a requirement under Part XX of the Act, if the Commission considers that a person or company has not complied with, or is not complying with, a requirement under Part XX or the regulations related to this part.

[200] The Commission may make an order under subsection 127(1) of the Act that trading in any securities by or of a person or company cease permanently or for such period as may be specified (the cease trade order) where, in its opinion, it is in the public interest to do so.

[201] Paragraph 2 of the draft order proposed by the First Capital Group requires that the Going Private Transaction be cease traded until the circular is amended to disclose that there will be compliance with Rule 61-501, that is, that the votes attached to shares held by joint actors will be excluded from the minority.

[202] In its Notice of Amendments to Rule 61-501, in commenting on the nature of the minority approval requirement, the Commission expressed the expectation that those voting be as free from conflicts as possible:

> […] when a majority vote of security holders can force the minority to relinquish their securities against their will at a price they may regard as inadequate, *it is reasonable to require that the security holders comprising the majority be as free from conflicts as possible so that their interests are aligned with those of the minority*. […] [Emphasis added.]
>
> (*Notice of Amendments to Rule 61-501* (2004), 27 O.S.C.B. 4483 at 4486.)

[203] The Commission's public interest jurisdiction is derived from the broad mandate conferred upon it under the Act to provide protection to investors from unfair, improper, or fraudulent practices and to foster fair and efficient capital market and confidence in their integrity (section 1.1 of the Act).

[204] The Commission recently commented upon its public interest jurisdiction in *Re Sears*, citing the *Cablecasting Ltd.* case:

> In *Re Cablecasting Ltd.*, [1978] O.S.C.B. 37, the Commission applied its public interest jurisdiction to a "going private transaction" effected in compliance with the requirements of the Ontario *Business Corporations Act*, R.S.O. 1990, c. B.16 but not in compliance with the disclosure requirements applicable to issuer bids under the predecessor policy to Rule 61-501. In its decision, the Commission balanced the need for intervention where a transaction was inconsistent with the best interests of investors against a preference for a policy oriented solution but, ultimately, did not have to issue a cease trade order because the respondent undertook to obtain minority approval. The Commission, however, provided guidance on when it was more likely to intervene under the rubric of its public interest jurisdiction despite the absence of any breach of Ontario securities law:
>
> > "If the transaction under attack was of an entirely novel nature, Commission action might seem more appropriate. Another relevant consideration in assessing whether to act against a particular transaction is whether the principle of the new policy ruling that would be required to deal with the transaction is foreshadowed by principles already enunciated in the Act, the regulations or prior policy statements. Where this is the case the Commission will be less reluctant to exercise its discretionary authority than it will be in cases that involve an entirely new principle." (*Re Cablecasting*, *supra* at 43).
>
> The frequently cited *Canadian Tire* decision established that the Commission can and will intervene on public interest grounds even if there is no breach of the Act, the regulations or Commission policies. In such circumstances, the Commission's public interest jurisdiction will be invoked where necessary to prevent an otherwise abusive transaction from occurring. Accordingly, the standard for intervention in such circumstances is more than a complaint of unfairness and will generally involve some showing of a broader impact on the operation of the capital markets (*Re Canadian Tire Corp.* (1987), 10 O.S.C.B. 858 at 948, affirmed (1987) 37 D.L.R (4th) 94 (Div. Ct)).
>
> (*Re Sears*, supra at paras. 303-304.)

[205] The Commission also considered this aspect of its public interest jurisdiction in *H.E.R.O. Industries Ltd.* In that case, the Commission noted that the "animating principles" of the Act, and the takeover bid provisions in particular, should compel it to intervene to protect the public interest against transactions that are abusive of both investors and the capital markets. The Commission held that "in determining whether or not to so intervene, the Commission must have regard to whether its intervention will enhance the pursuit of the policy objectives it has identified." (See *H.E.R.O. Industries Ltd.* (1990), 13 O.S.C.B. 3775 (Ont. Sec. Comm.) at p. 7(QL).)

[206] The parameters of the Commission's jurisdiction to impose terms and conditions under a section 127 order was addressed by both the Ontario Court of Appeal and the Supreme Court of Canada in the *Asbestos* decision. The Supreme Court there stated as follows:

> The breadth of the OSC's discretion to act in the public interest is also evident in the range and potential seriousness of the sanctions it can impose under s. 127(1). Furthermore, pursuant to s. 127(2), the OSC has an unrestricted discretion to attach terms and conditions to any order made under s. 127(1).
>
> (*Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132 (S.C.C.) at 149.)

[207] The Court went on to say that the nature of any section 127 order and the terms and conditions that may attach to it must be consistent with the Commission's overall mandate under the Act.

[208] We agree with the Respondents' counsel that this case is markedly different than the facts found in the *Re Sears* case: here, we make no finding of abusive conduct and find that there is no evidence to support such a finding. As counsel for Staff observes, "it is important to recognize that the factual context within which the joint actor relationship arose was very different than the facts in the present case". However, we certainly agree with counsel for the First Capital Group that the Commission

has the jurisdiction to make the requested order if deemed to be in the public interest, if such abuse were found, or in the absence of a finding of abuse, if a breach of securities law were found.

[209] In this case, we have found that David Kosoy, and the company he controls, First National, were joint actors within the meaning of Rule 61-501 and section 91 of the Act. As such, they ought to be excluded from the calculation of the "minority of the majority" calculation. If this is the case, the following result would ensue:

> (a) **Security holders** other than members of the Acquisition Group cast a total of 21,412,206 votes in respect of the Arrangement Resolution 18,191,446 (84.96%) in favour, and 3,220760 (15.04%) against. David Kosoy & First National Investments Inc. own 3,841,820 Securities. As such, security holders other than members of the Acquisition Group, and David Kosoy & First National Investments Inc., cast a total of 17,570,386 votes in respect of the Arrangement Resolution: 14,349,626 (81.67%) in favour, and 3,220,760 (18.33%) against.
>
> (b) **Common shareholders** other than members of the Acquisition Group cast a total of 20,051,668 votes in respect of the Arrangement Resolution: 16,830,908 (83.94%) in favour, and 3,220,760 (16.06%) against. David Kosoy & First National Investments Inc. own 3,451,320 common shares. As such, common shareholders other than members of the Acquisition Group, and David Kosoy & First National Investments Inc., cast a total of 16,600,348 votes in respect of the Arrangement Resolution: 13,379,588 (80.60%) in favour, and 3,220,760 (19.40%) against.

[210] In these circumstances, we are satisfied that there is very little chance that the outcome of the vote would be materially different than it was on April 30th. That being the case, we are not able to conclude that the original press release and disclosure which trumpeted that, "the votes attaching to the shares owned or controlled by SCI Acquisition, the Insiders and the support agreement counterparties are sufficient to approve the Arrangement Resolution", was materially misleading in its statement about the effect of the Support Agreements.

[211] Counsel for SCI Acquisition correctly points out that "the requirement of full disclosure does not mean that every instance of non-disclosure will constitute a breach of disclosure obligations". It is *material* information that must be disclosed and materiality is to be determined when there is a substantial likelihood that a reasonable shareholder would consider the information to be important when deciding whether to accept or reject the bid or plan. (See *Re MacDonald Oil Exploration Ltd.* (1999), 22 O.S.C.B. 6452 (Ont. Sec. Comm.) at 6455, Re Sears, supra at 310, and *Re Standard Broadcasting Corporation Limited and Starlight Broadcasting Inc. and Sulkirk Communications Limited* (1985), 8 O.S.C.B. 3672 (Ont. Sec. Comm.) at 3676).

[212] The Commission's "public interest" jurisdiction is broad and powerful, and must be exercised with caution, as recognized in the *Re Canadian Tire* decision. When considering the exercise of this jurisdiction, the Commission needs to have regard to all of the facts, all of the policy consideration at play, all of the underlying circumstances of the case, and all of the interests affected by the matter and the remedy sought. As described above, section 91 of the Act and Rule 61-501, fundamentally, must be interpreted to ensure protection of the minority. At the same time, we recognize the Commission's broad mandate as articulated in the *Re British Columbia Forest Products* case:

> However, the Commission's responsibility and duty is not only to the minority security holders but to the capital markets as a whole and to all participants therein whether majority or minority security holders. Accordingly, just as the Commission must be vigilant to protect minority security holders so too it must be vigilant not to abuse the rights of majority security holders […]
>
> […] There must be confidence in the marketplace for holders of large blocks of securities as well as for holders of small blocks of securities.
>
> (*Re British Columbia Forest Products Ltd.* (1981), 1 O.S.C.B. 116 (Ont. Sec. Comm.) at 120C.)

[213] We feel that in this case, it is useful to emphasize this latter point. In coming to our conclusion that it is not necessary for us to require a further meeting and vote, we took into account the exceptionally high voting turnout of Sterling shareholders at the Meeting, as well as the additional costs and time associated in calling another meeting. We also take notice that First Capital's bid was made quite late in the process, and is conditional. In addition, we note that although the bid launched by the First Capital Group on May 15, 2007 included a condition that there be no material adverse change in the company after April 24, 2007, a notice of a material change report was received by the company on May 10, 2007, and was disclosed on May 11, 2007.

[214] We also take notice of the fact that a Special Committee was highly engaged in this process, that it engaged experienced independent counsel and an independent valuator. As counsel for the Special Committee observed in its written submissions, "the fairness of the Special Committee process and the GMP valuation have not been directly challenged nor should they be". The Special Committee concluded that the Insider Bid "maximized shareholder value, in all of the circumstances".

[215] We see no reason to question the Special Committee's efforts, judgment or conclusions.

[216] As well, we read the Act as a whole. By doing so, we recognize other statutory remedies are available to dissenting shareholders, or those who disagree with our conclusion that the impugned materials were not materially misleading with respect to the Support Agreements. We are of the view that availability of alternative remedies is a relevant consideration in exercising the Commission's public interest jurisdiction.

[217] In light of the foregoing, we do not find that it is in the public interest, in this case, to grant the relief sought by the Applicants, except to exclude the votes of David Kosoy and First National, in the manner set out below.

VI. CONCLUSION

[218] For these Reasons, we conclude that Sterling shall correct the record of the votes cast at the Meeting held on April 30, 2007 in respect of the Going Private Transaction, to exclude from the Rule 61-501 calculation, the votes attached to all common shares and other securities of Sterling held by David Kosoy and First National Investments Inc. A copy of our Order, issued on June 4, 2007, is attached as Schedule A.

Dated at Toronto, this 16th day of July, 2007.

"Lawrence E. Ritchie"

"Harold P. Hands"

"Carol S. Perry"

3.1.2 Jan Michalik

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
JAN MICHALIK

APPLICATION FOR REGISTRATION OF TEZNIA FINANCIAL CORP.
AS AN INVESTMENT COUNSEL AND PORTFOLIO MANAGER (ICPM) AND
JAN S. MICHALIK'S REGISTRATION AS AN ADVISING OFFICER

Hearing:	June 19, 2007	
Decision:	July 23, 2007	
Panel:	Lawrence E. Ritchie	Vice-Chair and Chair of the Panel
	Harold P. Hands	Commissioner
	Margot C. Howard	Commissioner
Counsel:	Jane Waechter Charles Piroli	For the Ontario Securities Commission
	Jan Michalik	For himself

REASONS AND DECISION

A. Overview

(i) Background

[1] This is an application (the "Application") to convene a hearing pursuant to subsection 8(2) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") for the Ontario Securities Commission (the "Commission") to review a decision of the Director of the Commission, dated August 31, 2005 (the "Director's Decision"). The Director:

(1) Refused to grant Jan Michalik (the "Applicant") registration as an Advising Officer, an individual registered in the category of Investment Counsel and Portfolio Manager ("ICPM"), because he did not fulfill the experience requirement set out in Part 3.2(1)(b)(ii) of *OSC Rule 31-502 – Proficiency Requirements for Registrants* ("Rule 31-502"); and

(2) Refused to grant Teznia Financial Corp. ("Teznia"), the Applicant's company, registration as an ICPM because the company did not have an individual (i.e. a representative, partner or officer) who met the requirements set out in Part 3.2 of Rule 31-502.

[2] In this proceeding, the Applicant is self-represented. He is ultimately seeking registration for Teznia as an ICPM, but this proceeding relates primarily to his pursuit of registration for himself as an Advising Officer for an ICPM. It is noted that the employment of a registered Advising Officer is a precondition for Teznia's registration as an ICPM (as described below). The Applicant is the only candidate proposed to fulfill this requirement.

(ii) The Applicant

[3] The Applicant is the President and Chief Executive Officer of Teznia, a federally incorporated company. The Applicant, together with his wife, Hanna M. Michalik, founded Teznia in February 2002 with the objective of becoming an ICPM firm and contemplated that the Applicant would become its Advising Officer. Currently, Teznia has two employees, the Applicant and Hanna M. Michalik, and the company does not have an Advising Officer (an individual registered in the category of ICPM). As a result, Teznia has not been granted registration under the Act as an ICPM.

(iii) History of Proceedings

[4] On June 12, 2005, the Applicant applied for registration as an Advising Officer, sponsored by Teznia. Shortly thereafter, on June 24, 2005, the Applicant also applied for an exemption from the requirements in Rule 31-502 because he did not meet the proficiency requirements set out in Part 3.2(1)(b) of Rule 31-502. Staff of the Commission ("Staff") informed the Applicant on July 22, 2005, by way of registered mail that the request for registration was refused and that the exemption was denied.

[5] As a result of Staff's decision, the Applicant gave notice, which Staff received on July 25, 2005, that the Applicant intended to exercise his right to be heard pursuant to subsection 26(3) of the Act. On August 8, 2005, the Applicant was afforded an opportunity to be heard, and on August 31, 2005, the Director refused to grant the Applicant registration as an Advising Officer for ICPM on the basis that the Applicant had no prior work experience in the securities industry.

(iv) Reasons for the Director's Decision to Refuse Registration as an Advising Officer for ICPM

[6] In determining whether the Applicant was eligible for registration as an Advising Officer for ICPM, the Director considered the proficiency requirements set out in Part 3.2 of Rule 31-502 and the Companion Policy to Rule 31-502 (the "Companion Policy"), which provides guidance with respect to the applicability of an exemption to these requirements in Part 3.2 of Rule 31-502.

[7] The Director found that the Applicant did not have all the educational courses required by Part 3.2(1)(b)(i) of Rule 31-502. That Part requires that an individual complete either: (1) the Canadian Investment Manager Program and Level 1 of the Chartered Financial Analyst Program; or (2) the Chartered Financial Analyst Program.

[8] However, the Director held that the Applicant's actual educational background could be seen as an effective substitute for the statutory educational requirements and thus, the Applicant could benefit from an exemption for the educational requirements. As stated by the Director:

> Mr. Michalik does not have all the educational courses required by the rule. He has not completed the first year of the CFA. Mr. Michalik submits that his educational background and work experience make the CFA redundant. I agree that based on his education and his work experience as the senior economist at TD Bank,

> Mr. Michalik meets the educational requirements of the Rule and I would grant the exemption. (*In the Matter of an Application for Registration of Jan Michalik – Opportunity to be Heard by the Director under Subsection 26(3) of the Securities Act* (2005) 28 O.S.C.B. 7657 ("*Michalik*") at para. 17)

[9] With respect to Part 3.2(1)(b)(ii) of Rule 31-502, the Director found that the Applicant did not possess the requisite work experience in the securities industry and that an exemption was not appropriate in those circumstances. The Director explained in his reasons that:

> Mr. Michalik has had no work experience in the securities industry whatsoever. I do not find that his work experience at TD Bank, VFS and Teznia is equivalent to the experience required in the Rule nor do I find his experience more appropriate for this type of registration. (*Michalik*, *supra* at para. 19)

[10] As a result, the Applicant's request for registration as an Advising Officer for ICPM and qualification for an exemption were refused (*Michalik*, *supra* at para. 20).

(v) The Application for a Hearing

[11] By letter dated September 12, 2005 (the "September Letter" or the "Application"), the Applicant requested a "Hearing and Review" of the Director's Decision pursuant to subsection 8(2) of the Act. In the view of the Applicant, the Director failed to consider important facts regarding the Applicant's education and experience.

[12] The Applicant alleged in the September Letter that the Director should have applied the "spirit of the law" rather than the "letter of the law" in determining whether the Applicant should benefit from an exemption to the proficiency requirements in Rule 31-502. Furthermore, the Applicant alleged that it was an error on the part of the Director to determine that the Applicant has no securities industry experience. On this basis, the Applicant requests that the Director's Decision be reviewed, that the Applicant be granted registration as an Advising Officer, and that Teznia be granted registration as an ICPM.

[13] In response to his Application, Staff of the Commission request that: (1) the Commission not exempt the Applicant from the proficiency requirements of Part 3.2(1)(b) of Rule 31-502 because the Applicant does not possess the requisite work experience; and (2) the Commission deny the Applicant's Application.

B. The Issues

[14] The issues raised by the Applicant's request are:

(1) whether the Applicant meets the suitability criteria set out in Part 3.2(1)(b) of Rule 31-502, to be granted registration as an Advising Officer for ICPM (which will facilitate Teznia being granted registration as ICPM); and

(2) if not, whether an exemption should be granted pursuant to Part 4.1 of Rule 31-502 from complying with the proficiency requirements set out in Part 3.2(1)(b) of Rule 31-502.

C. The Legal Framework for the Requested Registration

[15] Subsection 25(1)(c) of the Act requires that all advisers, whether they are individuals or companies, be registered. Specifically, this subsection states:

> **25.** (1) No person or company shall,
>
> […]
>
> (c) act as an adviser unless the person or company is registered as an adviser, or is registered as a representative or as a partner or as an officer of a registered adviser and is acting on behalf of the adviser,
>
> and the registration has been made in accordance with Ontario securities law and the person or company has received written notice of the registration from the Director and, where the registration is subject to terms and conditions, the person or company complies with such terms and conditions.

[16] Section 26 of the Act specifies the test that must be applied when determining whether to grant registration. Section 26 of the Act states:

> Granting of registration
>
> **26.** (1) Unless it appears to the Director that the applicant is not suitable for registration, renewal of registration or reinstatement of registration or that the proposed registration, renewal of registration, reinstatement of registration or amendment to registration is objectionable, the Director shall grant registration, renewal of registration, reinstatement of registration or amendment to registration to an applicant.
>
> Terms and conditions
>
> (2) The Director may in his or her discretion restrict a registration by imposing terms and conditions thereon and, without limiting the generality of the foregoing, may restrict the duration of a registration and may restrict the registration to trades in certain securities or a certain class of securities.
>
> Refusal
>
> (3) The Director shall not refuse to grant, renew, reinstate or amend registration or impose terms and conditions thereon without giving the applicant an opportunity to be heard.

[17] The different types of registration available are set out in sections 98 to 101 of the *General Regulation*, R.R.O. 1990, Regulation 1015 ("Ont. Reg. 1015"). Specifically, section 99 of Ont. Reg. 1015 deals with the registration of advisers. The relevant parts of section 99 of Ont. Reg. 1015 are reproduced below:

> **99.** Every person or company that is required to register as an adviser shall be registered and classified into one or more of the following categories:
>
> […]
>
> 2. Investment counsel, being persons or companies that engage in or hold themselves out as engaging in the business of advising others as to the investing in or the buying or selling of specific securities or that are primarily engaged in giving continuous advice as to the investment of funds on the basis of the particular objectives of each client.
>
> 3. Portfolio managers, being persons or companies that are registered for the purpose of managing the investment portfolio of clients through discretionary authority granted by one or more clients.

[18] The combined effect of subsection 25(1)(c) of the Act (the registration requirement), and section 99 of Ont. Reg. 1015 (which defines the categories of advisers) is that a company (such as Teznia) needs to be registered to act as an adviser (i.e. ICPM), and such a company cannot act as an adviser unless the company has, a registered individual who satisfies the registration requirements (i.e. an individual accountable for the actions of the company), within its employ. Therefore, subsection 25(1)(c) of the Act and section 99 of Ont. Reg. 1015 read together require a company registered as an adviser (i.e. ICPM) to have an accountable registered individual.

[19] As mentioned above, subsections 99(2) and (3) of Ont. Reg. 1015 define the terms "Investment Counsel" and "Portfolio Manager". The requirements that an individual must fulfill to be registered as an "Investment Counsel" or "Portfolio Manager" are set out in Part 3.2 of Rule 31-502. These requirements apply to an individual who seeks to be registered as: (1) an ICPM; or (2) a representative, partner or officer of an ICPM. This is a mandatory requirement. The relevant text of Rule 31-502 is provided below:

> **3.2 Investment Counsel and Portfolio Managers and their Representatives, Partners, Officers, Branch Managers and Compliance Officers**
>
> (1) An individual shall not be granted registration as an investment counsel or portfolio manager or as a representative, partner or officer of an investment counsel or portfolio manager unless the individual
>
> […]
>
> (b) has
>
> (i) completed either

> (A) the Canadian Investment Manager Program and the first year of the Chartered Financial Analysts Examination Program; or
>
> (B) the Chartered Financial Analyst Examination Program, and
>
> (ii) established that the individual has been employed for five years performing research involving the financial analysis of investments, and that three of the five years have been under the supervision of a registered adviser having the responsibility on a discretionary basis for the management or supervision of investment portfolios having an aggregate value of not less than $5,000,000;
>
> […]
>
> [Emphasis added]

[20] Therefore, in order to qualify for registration as an ICPM, the criteria set out in Part 3.2(1)(b) of Rule 32-105 must be fulfilled (subject to exemptions described below). It follows that a company cannot be registered as an ICPM unless an individual within the company can satisfy the requirements in Part 3.2(1)(b). Such requirement is necessary to ensure that each registered entity has a qualified and accountable individual for the company's decisions, advice and the exercise of discretionary authority. Compliance with the proficiency requirements in Part 3.2(1)(b) of Rule 31-502 cannot be avoided, except as permitted by the Rule.

[21] Part 4.1 of Rule 31-502 provides that an exemption may be granted with respect to the proficiency requirements set out in Rule 31-502. Part 4.1 of Rule 31-502 states:

> **Part 4 Exemption**
>
> **4.1 Exemption** - The Director may grant an exemption to this Rule, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

[22] Moreover, the Companion Policy to Rule 31-502 states at Part 1.2 that the Director has the discretion to grant an exemption to the requirements in Part 3.2 of Rule 31-502. This discretion should be exercised only if the Director (or the Commission where it is acting in the Director's place) is satisfied that the person has the qualifications or experience that are equivalent to, or are more appropriate in the circumstances than, the qualifications or experience required under Part 3.2 of Rule 31-502. Specifically, Part 1.2 of the Companion Policy states:

> **Part 1 Proficiency Requirements for Registrants**
>
> **1.2 Alternative Qualifications** – The Director will consider granting an exemption to any of sections 2.1 to 2.5 and 3.1 to 3.3 of the Rule to any person or company if the Director is satisfied that the person or company has qualifications or experience that are equivalent to, or more appropriate in the circumstances than, the qualifications or experience required under the section.

[23] It is also important to note, that in carrying out their functions, an ICPM, and therefore an Advising Officer, has discretionary authority over investments of others, and needs to apply the "know your client" and "suitability" standards (the "KYC Rule"). It is therefore essential that a person registered as an Advising Officer meet all of the qualifications for that registration category. The requirement for an adviser to comply with the KYC Rule is set out in Part 1.5 of *OSC Rule 31-505 – Conditions of Registration* ("Rule 31-505"). The text of Part 1.5 of Rule 31-505 is provided below:

> **1.5 Know your Client and Suitability**
>
> (1) A person or company that is registered as a dealer or adviser and an individual that is registered as a salesperson, officer or partner of a registered dealer or as an officer or partner of a registered adviser shall make such enquiries about each client of that registrant as
>
> > (a) subject to section 1.6, enable the registrant to establish the identity and the creditworthiness of the client, and the reputation of the client if information known to the registrant causes doubt as to whether the client is of good reputation; and
> >
> > (b) subject to section 1.7, are appropriate, in view of the nature of the client's investments and of the type of transaction being effected for the client's account, to ascertain the general investment needs and objectives of the client and the suitability of a proposed purchase or sale of a security for the client.

(2) Despite paragraph (1)(a) a registrant is not required to make enquiries as to the creditworthiness of a client if the registrant is not financing the acquisition of securities by the client.

D. The Evidence

[24] During the Hearing of this matter, the Applicant testified on his own behalf and provided documentary evidence regarding his education and work experience. No evidence was adduced at this Hearing from any other witnesses. The following is a summary of the Applicant's evidence and submissions.

(i) The Applicant's Education

[25] The evidence adduced by the Applicant demonstrates that the Applicant has completed the following courses and educational programs:

- The Canadian Investment Funds Course, the Canadian Securities Course, Investment Management techniques, Portfolio Management Techniques, Partners, Directors and Senior Officers Qualifying Examination and has received a Canadian Investment Manager designation; and
- A Masters degree in Economics at a foreign university (Poland).

[26] The Applicant also did some work towards a Ph.D. in economics at a foreign university and had written a thesis. However, he did not complete his Ph.D. program (the Applicant advised that he moved to North America for a job before he had the opportunity to defend his thesis). According to the Applicant in his testimony, his former employer "TD Bank took [the Applicant] as a Ph.D. qualified individual". However, to be clear, he does not possess a Ph.D. designation.

[27] The evidence also revealed that the Applicant did not complete the following courses:

- The first year of the Chartered Financial Analyst Program; or
- The full three-year Chartered Financial Analyst Examination Program.

(ii) The Applicant's Work Experience

[28] In the September Letter and in his oral testimony, the Applicant described his work experience acquired since 1984, as follows:

(1) TD Bank

[29] According to the evidence, from 1984-1993, the Applicant worked at TD Bank in the capacity of Senior Economist. As set out in the Applicant's September Letter his work at the Bank "[…] included financial markets research, advisory role, commodity price projections, industry valuations, forecasting of interest rates, exchange rates, inflation and economic growth […]". The Applicant wrote and edited numerous reports, which were presented to a number of committees at TD Bank. Samples of the Applicant's work at TD were provided to us during the hearing.

[30] With respect to his work responsibilities at TD Bank, the Applicant explained in the September Letter that:

> Jan S. Michalik's activities at the Bank included financial markets research, advisory role, commodity price projections, industry valuations, forecasting of interest rates, exchange rates, inflation and economic growth and were done in a similar way as done by the securities dealers. […] The advising given by Jan S. Michalik to key TD personnel and TD bond and currency traders was the same as would have been in the securities industry and standards were higher than average in the securities industry. The portfolio weightings advice provided by Jan S. Michalik at the TD Bank was based on in-depth research of the industries, commodities, economic and financial trends, and global financial markets.

[31] Further, the Applicant gave testimony that while he was at TD Bank, he was supervised and mentored by Mr. Doug Peters ("Mr. Peters"), the Chief Economist and Senior Vice-President at TD Bank at the relevant time. During testimony, the Applicant explained that Staff was given Mr. Peters' name as a reference, and Staff did not object to this evidence. However, the Applicant did not provide a letter or any documentation directly from Mr. Peters, nor was Mr. Peters called as a witness.

[32] The Applicant testified that during the relevant period, Mr. Peters was responsible for managing part of TD Bank's bond portfolio, its foreign exchange exposure, and that Mr. Peters was involved in investment decisions on behalf of TD Bank. In the words of the Applicant, Mr. Peters "[…] managed loans, foreign loans, investment portfolio, the risk, foreign exchange risk on those portfolios". According to the Applicant, his experience working with Mr. Peters is evidence that the Applicant gained and

had experience managing a portfolio. The Applicant, while acknowledging that Mr. Peters was not registered under the Act, emphasized that Mr. Peters functioned as a registrant, but did not have to be registered since chartered Banks benefit from an exemption pursuant to section 34(a) of the Act.

[33] It was noted that for nearly the entire time the Applicant was employed with TD Bank, TD Bank did not directly own a securities dealer and the Applicant did not work directly with securities. The Applicant pointed out that TD Greenline, the Bank's first brokerage arm, came into existence in 1992, and TD Greenline allowed customers to purchase securities online but did not provide any advisory services to customers.

(2) Volvo

[34] From 1994 to 2002, the Applicant worked for Volvo Financial Services ("Volvo") in Poland. Initially, as a Managing Director of Sales, the Applicant performed company valuations for the purposes of granting credit to customers. In 2000, the Applicant became the President of Volvo. The Applicant provided us with oral and documentary evidence regarding his job description as President at Volvo, which entailed the general management of the company, stimulation of business development, achieving the company's targets, presiding over the Ordinary Credit Committee, presiding over the Management Team, and creating quality policies and goals for the company.

[35] In addition, while acting as a Board member for Volvo, the Applicant asserted that he had fiduciary duties to investors, customer and employees. As well, the Applicant stated in the September Letter, that he participated in "the preparation of a prospectus for a bond issue".

[36] Notwithstanding this experience, the Applicant acknowledged that during his employment at Volvo the Applicant did not work in the securities industry and did not work with retail clients.

[37] The Applicant also explained in the September Letter that while at Volvo, the Applicant applied the KYC Rule when analyzing companies for credit purposes. Specifically:

> […] Jan S. Michalik collected and managed KYC information at Volvo. The KYC information collected included customers investment objectives in Volvo equipment, investment restrictions, investment time frame, annual income, net worth, credit reports, and any information deemed necessary to assess suitability of an investment for a client.

(3) Teznia

[38] From 2002 to present, the Applicant worked at Teznia, which he founded. The Applicant provided documentary evidence and gave testimony relating to financial records and practices of Teznia to demonstrate how the company manages a portfolio. The value of Teznia's portfolio as of March 31, 2007, was $ 30, 268.72 USD.

[39] In addition to managing an investment portfolio for Teznia, from 1990 to 1993 and 2001 to 2005, Staff advised in its factum that the Applicant disclosed to Staff that he managed a small investment portfolio for himself and his wife:

- The individual portfolios managed had values between $10,000 CAD and $45,000 USD.
- The total cash that the Applicant managed at any given time did not exceed a maximum aggregate value of $120,000 CAD.

[40] While there was no direct or specific evidence to support these facts, no issue was raised by the parties as to their accuracy.

[41] At any given time, Teznia's portfolio was invested in no more than four or five equity securities from the period between November 30, 2002 and March 31, 2007.

E. Analysis

(i) This Hearing and Review is a Hearing *De Novo*

[42] The Applicant has applied for a Hearing and Review of the Director's Decision pursuant to subsection 8(2) of the Act. For clarity, section 8 of the Act states as follows:

> Review of Director's decision
>
> **8.** (1) Within 30 days after a decision of the Director, the Commission may notify the Director and any person or company directly affected of its intention to convene a hearing to review the decision.
>
> Same
>
> (2) Any person or company directly affected by a decision of the Director may, by notice in writing sent by registered mail to the Commission within thirty days after the mailing of the notice of the decision, request and be entitled to a hearing and review thereof by the Commission.
>
> Power on review
>
> (3) Upon a hearing and review, the Commission may by order confirm the decision under review or make such other decision as the Commission considers proper.
>
> Stay
>
> (4) Despite the fact that a person or company requests a hearing and review under subsection (2), the decision under review takes effect immediately, but the Commission may grant a stay until disposition of the hearing and review.

[43] It is well established that a review of this kind is a hearing *de novo*, which involves a fresh consideration of the matter, as if it had not been heard before and no decision had been previously rendered. (*Re Biocapital Biotechnology* (2001), 24 O.S.C.B. 2843 at p. 8 of 12; and *Re JDS Uniphase Ltd.* (1999), 22 O.S.C.B. 5303 at page 3 of 13). A Commission Panel can substitute its own decision for that of the Director: "[…] when conducting a review of the Director's decision pursuant to section 8 of the Act, [the Commission is] not bound in any way by the Director's determination" (See *Re Triax Growth Fund Inc.* (2005), 28 O.S.C.B. 10139 at para. 25).

(ii) Public Interest Jurisdiction

[44] When exercising its discretion to review the decision of a Director, the Commission is required to act in the public interest with due regard to its mandate/purpose under the Act, set out in section 1.1 of the Act. This has been articulated in the decision *Re BioCapital Biotechnology*:

> We are required to exercise our discretion in the public interest. In determining the public interest the purposes of the Act are relevant. They are set out in section 1.1 of the Act. The first purpose is to provide protection to investors from unfair, improper or fraudulent practices. The second purpose is to foster fair and efficient capital markets and confidence in capital markets. (*Re BioCapital Biotechnology* (2001), 24 O.S.C.B. 2843 ("*BioCapital*") at page 8 of 12)

[45] While in the context of a proceeding under section 127 of the Act, the Supreme Court of Canada described the Commission's public interest jurisdiction in *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*:

> The purpose of the Commission's public interest jurisdiction is neither remedial nor punitive; it is protective and preventive, intended to be exercised to prevent likely future harm to Ontario's capital markets. The past conduct of offending market participants is relevant but only to assessing whether their future conduct is likely to harm the integrity of the capital markets." [Emphasis added] (*Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)* (2001), 199 D.L.R. (4th) 577 (S.C.C) at para. 36)

[46] As previously mentioned in paragraph 44 above, one of the paramount objectives of the Act is to protect the public (*Gregory & Co. v. Quebec (Securities Commission)*, [1961] S.C.R. 584 at para. 11). The Commission exercises its discretion in the public interest prospectively to protect the public and the integrity of the capital markets to prevent future harm. This was clearly articulated in *Mithras Management Ltd.* ("*Mithras*"), where the Commission stated that:

> […] the role of this Commission is to protect the public interest by removing from the capital markets -- wholly or partially, permanently or temporarily, as the circumstances may warrant -- those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts, particularly under section 118 of the Act. We are here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient. In so doing we must, of necessity, look to past conduct as a guide to what we believe a person's future conduct might reasonably be expected to be; we are not prescient, after all. [Emphasis added] (*Mithras*, (1990), 13 O.S.C.B. 1600 at 1610 and 1611)

[47] The principle enunciated in *Mithras*, that the Commission has the mandate to restrain future harmful conduct in the capital markets was also emphasized and cited in *Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743 (at para 23).

[48] In pursuing the purposes of the Act, including protecting the investing public, the Commission is required to have regard to certain fundamental principles, such as the requirements to maintain high standards of fitness and business conduct to ensure honest and reputable conduct by registrants. Registrants have a very important function in the capital markets and they are also in a position where they may potentially harm the public. Regulating conduct of registrants is a matter of public interest. Consequently, proficiency requirements have been put in place by the Commission to ensure that the public deal with qualified registrants.

[49] Proficiency requirements for registrants support, promote and enhance these objectives. In the case of an ICPM, that proficiency includes both expertise in securities trading and also in the analysis that is required to manage a securities portfolio for others on a discretionary basis. Proficiency requirements also contribute to ensure regulatory compliance and enhance the efficiency of the capital markets.

[50] Strict adherence to defined proficiency requirements, subject to well articulated exceptions, are necessary and desirable: they permit both applicants and members of the investing public to know precisely and with certainty that registrants will meet reasonable, well-defined standards, which will be consistently applied. As stated in *Re Oxford Investments Holdings Inc.* (2007), ABASC 150 (Alta Sec. Comm.): "[t]he advisor registration requirements are intended to ensure that investors receive sound investment advice by setting education and conduct standards for registered advisors and by providing ongoing monitoring and compliance obligations" (*Re Oxford Investments Holdings Inc.*, *supra* at para. 57). The well-defined proficiency standards are mandatory (subject to clearly articulated exceptions). We are of the view that it is in the public interest that they be strictly and consistently construed.

(iii) Registration Under the Securities Act

(1) General Principles

[51] Registration is a privilege that is granted to individuals and entities that have demonstrated suitability. No person has a right to be registered (*Re Kippax* (2003), 26 O.S.C.B. 8205 at para. 2). This was emphasized by this Commission in *Re Trend Capital Services Inc.*:

> The regime of securities regulation established by the Act and the Regulations, and discussed in decisions of the Commission and the Courts makes it clear that obtaining registration entitling persons to deal with the public is a privilege and not a right and that this must constantly be borne in mind. (*Re Trend Capital Services Inc.* (1992), 15 O.S.C.B. 1711 at pp. 1764 and 1765)

[52] As previously mentioned, a registrant has the capacity to do material harm to individual investors, other market intermediaries, and the public at large. The ICPM category of registration involves the most onerous requirements for registration under the Act, reflective of the extent of discretion that the ICPM exercises over investor assets.

[53] As set out above, section 26 of the Act grants the Director the authority to refuse to grant registration if the applicant is not suitable or if the "proposed registration [is otherwise] objectionable". Further, subsection 26(2) of the Act authorizes the Director to impose terms and conditions, including terms and conditions that restrict the duration of registration, where appropriate. Needless to say, terms and conditions ought to be imposed only where an applicant otherwise meets the standard for registration but circumstances are deemed to require additional safeguards. As counsel for Staff pointed out, the imposition of conditions on registration in order to grant registration should not be used in an attempt to fix a deficient application: the power should be used sparingly. Specifically, counsel for Staff referred us to the following passage from *Re Jaynes*:

> While terms and conditions restricting registration may be appropriate in a wide variety of circumstances, they should not be used to "shore up" a fundamentally objectionable registration. To do so would be to create the very real risk that a client's interests cannot be effectively served due to the severity and extent of the restrictions imposed. (*Re Jaynes* (2000), 23 O.S.C.B. 1543 at page 9 of 12).

(2) Application of Registration Criteria in This Case

[54] At the outset, it should be emphasized that the determination as to whether an applicant is suitable for registration is a fact-based enquiry, and depends on all of the specific circumstances of the Applicant.

[55] There are three criteria for determining suitability for registration: integrity, proficiency and financial solvency (see *Re Goldman Sachs Asset Management L.P.* (2006), 29 O.S.C.B. 4349 at para. 6; and *Re Hansberger Global Investors Inc.* (2005), 28 O.S.C.B. 6899 at para. 6). In this case, Staff takes no issue with the Applicant's integrity and financial solvency, nor did the Director in making the Director's Decision.

[56] The determination of "proficiency" for the purposes of this analysis involves a consideration of the sufficiency of the Applicant's education and experience (see David Johnston and Kathleen Doyle Rockwell, *Canadian Securities Regulation*, 4th ed. (Markham: LexisNexis Canada Inc., 2006) at 375. Proficiency requirements directly relate to "educational and/or apprenticeship requirements"). The applicable proficiency requirements in this matter are established in Part 3.2(b) of Rule 31-502 (set out above).

[57] Staff also emphasized that the requirements set out in Part 3.2(1)(b) of Rule 31-502 are mandatory (subject to the Director's power to exempt, as set out in Part 4.1 of Rule 31-502). This is evident from the wording "[a]n individual shall not be granted registration" used in Part 3.2(1) of Rule 31-502 [emphasis added]. The mandatory use of the words "shall not", read together with Part 4, suggest a strong imperative against the use of the Part 4 exemptive powers and when used, it ought to be used sparingly and in a manner which ensures that the overall objective of the proficiency requirements are met.

[58] Staff counsel submitted, exemptions to Part 3.2(1)(b) of Rule 31-502 should be made available and applied on a principled basis. We agree. This principle is reflected in the Companion Policy. Part 1.2 of the Companion Policy 31-502 states that an exemption will only be granted if the Applicant has qualifications or experience that is equivalent to or more appropriate in the circumstances than, the qualifications or experience required under Part 3.2 of Rule 31-502. As the matter is before us as a hearing "de novo", this is a matter of discretion left to us, as the Hearing panel.

(3) The Applicant's Position

[59] The Applicant asserts that he does in fact have the requisite work experience to qualify as an Advising Officer for ICPM. He emphasizes that he:

- Gained experience in the securities industry during the past three and a half years by working for Teznia, which has been reporting its operations to CRA as portfolio management activities and the Applicant has been acting as the Portfolio Manager;
- Prepared Teznia's Operating Manual and other such materials;
- Completed the Portfolio Management Techniques, Partners, Directors and Senior Officers Qualifying Examination and has received a Canadian Investment Manager designation;
- Has more than twenty years of experience in the financial services industry at the senior management level, and his qualifications and experience are equivalent to, or more appropriate than the qualifications and experience required by the Rule;
- While working at Volvo for 7 years, performed company valuations using fundamental quantitative and qualitative analyses, which are the same as valuations performed in the securities industry;
- Collected and managed KYC information at Volvo;
- Acted as a Board member at Volvo, having fiduciary duties to investors, customers and employees;
- Prepared a prospectus for a bond issue while working for Volvo;
- Has over 8 years of experience at TD Bank, and the Applicant contends that this work experience is very similar to that gained in the securities industry (i.e. financial markets research, commodity price projections, industry valuations…etc.);
- The Applicant takes the position that his experience founding Teznia is also relevant securities industry work; and
- The Applicant undertakes to report all transactions of Teznia to the OSC for as along as necessary to prove that it has the capacity to function as ICPM.

[60] The Applicant considers himself to be qualified for registration, and takes issue with the suggested distinction made between what an adviser to an ICPM does, and his work experience acquired at either TD or Volvo, both of which were outside of the securities industry. He emphasizes that valuation for credit is the same as valuation in the securities industry – he submits that the only difference is how the business is administered. The Applicant takes the position that the KYC Rule is known, understood and applied in the same way in both the credit context and the securities context – the Applicant submits that in the credit environment, like securities, he was making investments.

[61] Lastly, the Applicant argues that Staff, and the Director, are improperly trying to apply the "strict letter of the law", rather than the spirit or underlying principles of Ontario securities law. He submits that it is the latter that should govern, and if this is applied, his registration should be granted.

(4) Application of the Law

[62] We have considered the thorough submissions from Staff counsel and the Applicant. In particular, we have carefully heard and considered the Applicant's submissions and his responses to questions regarding his qualifications. We agree with Staff counsel that there is no reason for us to conclude that the Applicant is anything but intelligent, well-educated and well-meaning. We find nothing in the evidence to suggest that the Applicant has not acted, is not acting and will not continue to act in good faith. However, we find that the specific registration requirements set out in Part 3.2(1)(b) of Rule 31-502, which relate to relevant education and work experience in the securities industry, and Part 1.2 the Companion Policy, which deals with the circumstances that merit an exemption, have not been met, both in accordance with the "letter" and in the "spirit of the law".

[63] In the matter before us, we note that the Applicant's educational qualifications are somewhat short of the requirements to quality for an Advising Officer for ICPM (which are set out above). Notwithstanding this, counsel for Staff emphasized (as did the Director in the Director's Decision) that the educational requirements could be deemed to be met if equivalent educational experience existed. Staff counsel also pointed out that the Director did find that the education requirements were met and that the Applicant could benefit from an exemption from the education requirements.

[64] The evidence also establishes that the Applicant does not fulfill the requisite work requirements under Part 3.2(1)(b)(ii) of Rule 31-502. First, as part of the economics department of TD Bank, we note that although the Applicant had performed extensive economic research for more than 5 years, such work seemed to be limited to providing the work to individuals and committees, who in turn used it in their credit and investment decisions. There is no evidence that this work involved research and analysis relating to securities for investment or managing portfolios on a discretionary basis, or otherwise. Secondly, the Applicant has never been involved in the management of investment portfolios under the supervision of a registered adviser having responsibility for the management or supervision of investment portfolios with an aggregate value of not less than $5,000,000, on a discretionary basis or otherwise. We do not find that managing an investment portfolio for Teznia, funded from contributed capital, and a portfolio for himself and his wife (which we were advised totaled a maximum of $120,000) is sufficient experience to meet the second part of the test. Lastly, while the Applicant's experience at Volvo may have involved extensive operational and credit experience, we again do not understand this to have involved the management of investment portfolios, and certainly not discretionary decision making on behalf of investor clients in managing such investor portfolios.

[65] We have carefully considered the Applicant's submissions and we are unable to find that the Applicant's work experience is sufficient to establish proficiencies for the registration sought to be granted. While employed at TD Bank, TD Bank was not involved in the securities business; the Applicant's testimony revealed that TD Bank only got involved in the securities business in 1992 with the inception of TD Greenline, and at this time TD Greenline did not provide advisory services to clients. We also note that the Applicant left his employment at TD Bank in 1993, shortly after TD Greenline came into existence. Further, while the Applicant may have consulted to the investment committees at TD Bank, he did not serve on them.

[66] Moreover, we are not satisfied that while working at TD Bank he had adequate exposure to the relevant securities regulatory framework, through his supervisors or otherwise. During this time, his supervisor, Mr. Peters, was not employed as a portfolio manager nor as a registrant under the Act. We recognize that as an employee of a chartered bank, Mr. Peters would have been exempt from registration. However, our concern is that the Applicant's supervisor was not employed in a position even analogous to a registrant under the Act. Further, while the Applicant may have had a knowledgeable and able mentor, the Applicant's work for this mentor dealt with analysis and not the actual investing in securities and managing a portfolio. We, as a Panel, have to determine whether this is relevant supervision and mentoring for an ICPM, and we agree with Staff counsel's submission that the mentoring requirement has not been met. We share Staff's concerns that: (1) notwithstanding the successful career that the Applicant has had, his success is not in the securities industry and the Applicant never benefited from direct mentoring of a portfolio manager; and (2) it is in the public interest to uphold and abide by the mentoring requirement in Part 3.2(1)(b)(ii) as not doing so would create an unfavorable precedent.

[67] In addition, the Applicant has never acted in an advisory capacity to retail investors. While the Applicant does have impressive experience at TD Bank and Volvo, we do not accept that he has appropriate experience in interpreting and applying the KYC Rule, and in particular, any relevant experience within a discretionary investment management context. We accept that the information gathered in making a decision to extend credit may often encompass information required under the KYC Rule.

However, we emphasize that there is a significant substantive difference between the application of the information gathered in the credit and in the investment management contexts. In the credit context, the customer has already decided to buy and it is simply a matter of evaluating whether the customer can or cannot pay. In contrast, in the investment management context, the information is used to determine the appropriate investments for a portfolio, as well as the interplay of those investments in assessing and pursuing the client's investment objectives.

[68] The Applicant argues that work experience gained in a credit context and a securities context is the same. In the context of gaining proficiency for registration, we respectfully disagree. Analysis of a company for credit is not the same as analysis for investment purposes because the interests, concerns and exercise is markedly different. Analysis for investment purposes requires a full understanding and appreciation of the risks to the investors and is a backbone for the proper fulfillment of fiduciary obligations to one's client, which is absent in the credit environment.

[69] In addition, his experience at TD Bank was dealing with institutional clients; whereas in the investment management context, the Applicant has stated his intention to get involved with retail investors. These are two different categories of clients. The needs and knowledge of retail investors cannot automatically be equated to that of sophisticated institutional clients. This is where mentoring can play an important role to expose the Applicant to the unique and specific concerns and issues that arise for retail investors in a securities context. We agree with Staff counsel's submission that the mentoring requirement in Part 3.2(1)(b)(ii) of Rule 31-502 is the Commission's way of saying to the world that this is essential to foster fiduciary obligations, which are crucial to a registrant's role and relationship to investors and in the market as a whole.

[70] Specifically, the KYC Rule set out in Part 1.5 of Rule 31-505 contemplates that an adviser will make inquiries beyond the creditworthiness of the client. An adviser, among other things, must make inquiries into the reputation of the client, the client's understanding and familiarity with investing, and the nature of the client's investments in order to ensure that the securities in question are suitable for the client.

[71] In a letter to Staff dated July 6, 2005, the Applicant made the following statements with respect to his work experience at TD Bank:

> (1) I did not advise clients on specific securities while at TD. At the Toronto Dominion Bank, I gave advice to institutional clients of the Bank and the TD management staff; and
>
> (2) I am managing on a discretionary basis equity investment portfolios belonging to Teznia Financial Corp., my wife, and myself. I have not been managing any other investment portfolios involving public or private funds.

[72] When asked about his statements in this letter, the Applicant explained that he stated that he did not research specific securities because he researched companies that issue securities and not the securities themselves. Specifically, the Applicant stated:

> I do not believe in research on specific securities, I believe in research in companies that issue securities. So, I said I did not research on specific securities because I am not interested in speculating […].

[73] Notwithstanding this subsequent explanation, there was no evidence to ground a finding that the Applicant has any experience in advising clients on either specific securities, or the suitability of investments for clients within an investment portfolio.

[74] The Applicant argues that it is necessary that we grant him registration as an Advising Officer in order for him to register Teznia as an ICPM. He notes that he cannot run Teznia as structured without any other registration than that for which he requests. Staff has proposed some alternatives for the Applicant. We agree that alternatives do in fact exist.

[75] For example, as Staff counsel pointed out in their submissions, Teznia could hire an individual who has already been qualified as an Advising Officer for ICPM. Our decision not to grant registration to the Applicant at this time does not preclude the Applicant or Teznia from hiring an individual to fulfill the role of an Advising Officer in order for Teznia to qualify for ICPM registration. In fact, the Applicant acknowledged that Teznia does have the option of hiring a registered advisor, and the Applicant has indicated Teznia intends to hire a registered portfolio manager after the business is set up. However, the Applicant cited business reasons for waiting to do so. We agree with Staff that, in these circumstances, that is not a factor relevant to our consideration of whether the Applicant should be granted registration.

[76] Staff also inquired during the hearing whether the Applicant has tried to go out and work for a registered ICPM and gain experience under the supervision of a registered adviser. The Applicant responded that he would not be able to get employment in this area, either because (1) no one would hire him because his company Teznia is a potential fledgling competitor "in the wings"; (2) the Director's Decision, dated August 31, 2005, made public, found him not to be qualified and this has prejudiced him; and (3) that he felt that he was sufficiently senior in the industry to not require further mentoring.

[77] In any event, it is our view that these factors do not alter the fact of the shortcomings in the Applicant's proficiency requirements.

F. Conclusion

[78] We find that due to the Applicant's lack of experience in the management of third party discretionary investment portfolios, his lack of experience working directly in the securities industry, and the Applicant's lack of having been mentored in an investment and portfolio management context, he does not fulfill the proficiency requirements set out in Part 3.2(1)(b)(ii) of Rule 31-502. We make this finding notwithstanding our agreement with Staff counsel that the Applicant is "manifestly an accomplished person with many of the attributes needed for the role he wants to play".

[79] With respect to Part 3.2(1)(b)(i) of Rule 31-502, which deals with education requirements, the Director would have granted an exemption with respect to education, and we agree with that view: the Applicant's in-depth education and practical application of economic analysis is sufficient in these circumstances.

[80] However, with respect to Part 3.2(1)(b)(ii) of Rule 31-502, as stated above, we agree with the Director's Decision, and the submissions of Staff, that the Applicant lacks the experience and requisite supervision under a mentor in respect of managing securities investments on behalf of clients to reflect capable or even satisfactory proficiency to play the role of a registered officer of an ICPM. While the Applicant certainly received supervision and mentoring during the Applicant's employment at TD Bank, that mentoring was not related to managing an investment portfolio.

[81] Further, the Applicant's experience managing investment portfolios is lacking, in that the assets under his management today are limited to: (a) portfolios that he or his spouse have a beneficial interest in; and (b) the size of the assets under management are relatively small compared to the amount of $5,000,000 which is set out in Part 3.2(1)(b)(ii) of Rule 31-502.

[82] As a result, the Applicant's Request for Registration as an Advising Officer for an ICPM is denied.

Dated at Toronto, this 23rd day of July, 2007.

"Lawrence E. Ritchie"

"Harold P. Hands"

"Margot C. Howard"

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Chapter 4

Cease Trading Orders

4.1.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

Company Name	Date of Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Revoke
CNR Capital Corporation	10 Jul 07	20 Jul 07	20 Jul 07	

4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Extending Order	Date of Lapse/ Expire	Date of Issuer Temporary Order
SR Telecom Inc.	05 Apr 07	18 Apr 07	19 Apr 07	19 July 07	

4.2.2 Outstanding Management & Insider Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Extending Order	Date of Lapse/ Expire	Date of Issuer Temporary Order
AldeaVision Solutions Inc.	03 May 07	16 May 07	16 May 07		
Argus Corporation Limited	25 May 04	03 Jun 04	03 Jun 04		
CoolBrands International Inc.	30 Nov 06	13 Dec 06	13 Dec 06		
Fareport Capital Inc.	13 Jul 07	26 Jul 07			
Hip Interactive Corp.	04 Jul 05	15 Jul 05	15 Jul 05		
HMZ Metals Inc.	03 Apr 06	14 Apr 06	17 Apr 06		
IMAX Corporation	03 Apr 07	16 Apr 07	16 Apr 07		
SR Telecom Inc.	05 Apr 07	18 Apr 07	19 Apr 07	19 July 07	
Urbanfund Corp.	07 May 07	18 May 07	18 May 07		
VVC Exploration Corporation	04 Jun 07	15 Jun 07	15 Jun 07		

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Chapter 5

Rules and Policies

5.1.1 NP 12-202 Revocation of a Compliance-related Cease Trade Order

NOTICE OF NATIONAL POLICY 12-202

REVOCATION OF A COMPLIANCE-RELATED CEASE TRADE ORDER

Notice of Policy

The members of the Canadian Securities Administrators (the CSA or we) have adopted National Policy 12-202 *Revocation of a Compliance-related Cease Trade Order* (the Policy).

The Policy is effective July 27, 2007.

Background

On January 5, 2007, the CSA published a proposed version of the Policy for comment. During the comment period, which ended on March 6, 2007, we received no comment letters.

Substance and purpose of the Policy

The Policy applies in all jurisdictions and outlines what issuers, security-holders or other parties must do to apply for a partial or full revocation of a compliance-related cease trade order. Securities commissions issue a cease trade order to halt trading in the securities of an issuer for a predetermined or an indefinite time.

Questions

Please refer your questions about the Policy to any of:

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July 27, 2007

NATIONAL POLICY 12-202
REVOCATION OF A COMPLIANCE-RELATED CEASE TRADE ORDER

TABLE OF CONTENTS

Part 1 Introduction

This policy provides guidance for issuers that are subject to a CTO (as defined below) issued as a result of failing to comply with continuous disclosure requirements.

This policy explains what an issuer should do to apply for a partial or full revocation of a CTO. It describes what the issuer should file, the general type of review that the securities regulatory authorities (or "we") will perform, and explains some of the factors that we will consider when determining whether to grant a full or partial revocation of the CTO.

Although this policy provides guidance to issuers applying for a revocation order, the policy also applies, where the context permits, to a securityholder or other party applying for a revocation order.

Part 2 Definitions

In this policy:

"annual meeting requirement" means the requirement in applicable corporate legislation or any equivalent non-corporate requirement to hold an annual meeting of securityholders;

"application" means an application for a partial or full revocation of a CTO submitted to the applicable jurisdictions (see Appendix A for section references); in British Columbia, if the CTO has been in effect for 90 days or less, the filing of the required continuous disclosure documents constitutes the application;

"CTO" means a cease trade order issued against an issuer or its management or insiders prohibiting trading in the securities of the issuer as a result of a failure to comply with continuous disclosure requirements;

"MD&A" means management's discussion and analysis as defined in National Instrument 51-102 *Continuous Disclosure Obligations*;

"MI 52-109" means Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*;

"MRFP" means management's report on fund performance as defined in National Instrument 81-106 *Investment Fund Continuous Disclosure*; and

"partial revocation order" means an order that permits one or more issuers or individuals to conduct specific trades when a CTO is in effect.

In Quebec, "trade" is not defined in the Securities Act ("QSA"). This policy covers all securities transactions that may be the object of an order provided for in paragraph 3 of section 265 QSA.

Terms defined in National Instrument 14-101 *Definitions* have the same meaning in this policy.

Part 3 Qualification and Criteria for Revocation

3.1 Full revocations

(1) Filing requirements

Generally, we will not exercise our discretion to grant a full revocation order, subject to subsections 3.1(2) and 3.1(3), unless the issuer has filed all of its outstanding continuous disclosure. The most common deficiencies relate to disclosure required under:

(a) National Instrument 51-102 *Continuous Disclosure Obligations*;

(b) Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*;

(c) National Instrument 81-106 *Investment Fund Continuous Disclosure*;

(d) National Instrument 43-101 *Standards of Disclosure for Mineral Projects*;

(e) National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*;

(f) Multilateral Instrument 52-110 *Audit Committees* or BC Instrument 52-509 *Audit Committees*, as applicable; and

(g) National Instrument 58-101 *Disclosure of Corporate Governance Practices*.

(2) Exceptions to interim filing requirements

In exercising our discretion to revoke a CTO, we may elect not to require the issuer to file certain outstanding interim financial statements, interim MD&A, interim MRFP or interim certificates under MI 52-109, subject to subsection 3.1(3), if the issuer has filed:

(a) all outstanding audited annual financial statements, annual MD&A, annual MRFP and annual certificates under MI 52-109 required to be filed under applicable securities legislation;

(b) all outstanding annual information forms, information circulars and material change reports required to be filed under applicable securities legislation; and

(c) all outstanding interim financial statements (which include the applicable comparatives from the prior fiscal year), interim MD&A, interim MRFP and interim certificates under MI 52-109 for all interim periods in the current fiscal year required to be filed under applicable securities legislation.

(3) Exceptions to annual filing requirements

In certain cases, an issuer seeking a revocation order may consider that the length of time that has elapsed since the date of the CTO may make the preparation and filing of all outstanding disclosure impractical, or of limited use to investors. This may particularly apply to disclosure for periods that ended more than three years before the date of the application, or periods prior to a significant change in the issuer's business. An issuer seeking a revocation order in these circumstances should make detailed submissions explaining its position. In appropriate cases, we will consider whether the filing of certain outstanding disclosure might not be necessary as a precondition of a revocation order. The factors we may consider include:

(a) age of information to be contained in the continuous disclosure filing – information from older periods may be less relevant than information from more recent periods;

(b) access to records – lack of access to records may hinder compliance with some filing requirements;

(c) activity during the period – if an issuer was inactive or changed its business at any time while it was cease-traded, disclosure of information from or prior to this time may be less relevant;

(d) length of time the CTO has been in effect; and

(e) whether the historical disclosure relates to significant transactions or litigation.

We generally consider that disclosure for periods within the most recent three financial years of the issuer provides useful information for investors. We generally do not consider the time and cost required to prepare disclosure to be a compelling factor in our determination of the disclosure to be provided in connection with an application to revoke a CTO.

(4) Outstanding fees

Before we will issue a revocation order, the issuer must pay all outstanding fees to each relevant jurisdiction. Outstanding fees generally include, where applicable, all activity and participation fees, and late filing fees.

Depending on how long the CTO has been in effect, and whether the issuer filed its continuous disclosure documents in a timely manner while it was cease-traded, the amount of outstanding fees can be considerable. Before submitting an application, issuers should contact the relevant regulators to confirm the fees that will be payable.

(5) Annual meeting

An issuer that applies for the revocation of a CTO should ensure that it has complied with the annual meeting requirement.

If the issuer has not complied with the annual meeting requirement, we will generally not exercise our discretion to issue a revocation order unless the issuer provides an undertaking to the relevant securities regulatory authorities to hold the annual meeting within three months after the date on which the CTO is revoked.

Any such undertaking will not, however, relieve the issuer from any obligation it may have under the relevant legislation containing the annual meeting requirement.

(6) Recurring CTOs

An issuer that has been subject to another CTO within the 12-month period before the date of the current CTO should provide a detailed explanation in its application of the reasons for the multiple defaults.

In addition, we may request that the issuer provide to us information relating to disclosure controls and procedures that the issuer applies to ensure compliance with continuous disclosure requirements.

(7) News release

When a revocation order is issued, if the revocation of the CTO is a "material change", the issuer is required by securities legislation to issue and file a news release and material change report. If the revocation of the CTO is not a material change, the issuer should consider issuing a news release that announces the revocation of the CTO and outlines the issuer's future plans.

If the issuer has ceased to carry on an active business, or its business purpose has been abandoned, the news release should disclose this. The news release should also describe the issuer's future plans or state that the issuer has no future plans.

3.2 Partial revocations

(1) Permitted transactions

We will consider granting partial revocation orders to permit certain transactions involving trades in securities of the issuer, such as private placements or share-for-debt transactions, to allow the issuer to recapitalize or to raise sufficient funds to prepare and file outstanding continuous disclosure documents. We will generally not exercise our discretion to grant a partial revocation order unless the issuer intends to subsequently apply for a full revocation order and reasonably anticipates having sufficient resources after the proposed transaction to bring its continuous disclosure and fees up to date.

Other circumstances may arise that warrant a partial revocation order. For example, we will generally grant a partial revocation order to permit a securityholder to sell securities for a nominal amount solely to establish a tax loss.

Issuers may wish to consult their legal counsel to determine whether a particular transaction constitutes a trade and therefore requires an application for a partial revocation order. For example, in most jurisdictions, a disposition of securities by way of a bona fide gift, made in good faith and not as part of a plan or scheme to evade requirements of securities legislation, would generally not be considered a "trade" under provincial and territorial securities legislation. As such, where applicable, a partial revocation order would not typically be required in these circumstances. However, after the gift, the securities may remain subject to the CTO depending on the terms of the CTO.

(2) Acts in furtherance of a trade

The definition of trade, where applicable, includes acts in furtherance of a trade. In any particular case, it is a question of legal interpretation whether a step taken by an issuer or other party is an act in furtherance of a trade, and therefore a breach of the CTO. Issuers should consult their legal counsel whenever there is doubt as to whether a proposed action is an act in furtherance of a trade. An issuer must obtain a partial revocation order before carrying out an act in furtherance of a trade.

(3) Continuing effect of CTO

Following the completion of the trades permitted by a partial revocation of a CTO against an issuer, all securities of the issuer may remain subject to the CTO until a full revocation is granted, depending on the terms of the CTO.

Part 4 Applications

4.1 Application for a full revocation

An issuer requesting a full revocation order should submit an application, with the application fees, to the securities regulatory authorities in all jurisdictions where the issuer's securities are cease-traded. The application should include the following information:

(a) the jurisdictions where the issuer's securities are cease-traded;

(b) details of any revocation applications currently in progress in the other jurisdictions;

(c) copies of any draft material change report or news release as discussed in section 3.1(7);

(d) confirmation that all continuous disclosure documents have been filed with the relevant securities regulatory authorities or a description of the documents that will be filed;

(e) confirmation that the issuer's SEDAR and SEDI profiles are up-to-date;

(f) a draft revocation order; and

(g) the personal information specified in Appendix B of National Instrument 44-101 *Short Form Prospectus Distributions* for each current and incoming director, executive officer and promoter of the issuer.

If the promoter is not an individual, the issuer should provide information for each director and executive officer of the promoter.

If the issuer is an investment fund, the issuer should also provide personal information for each director and executive officer of the manager of the investment fund.

All applications for full revocation will result in some level of review of the issuer's continuous disclosure record for compliance. If the CTO has been in effect for more than 90 days, this review will be similar to the full review under the harmonized continuous disclosure review program described in CSA Staff Notice 51-312 *Harmonized Continuous Disclosure Review Program*.

4.2 Application for a partial revocation

(1) General

An issuer requesting a partial revocation order should submit an application, with the application fees, to the securities regulatory authorities in all jurisdictions where the issuer's securities are cease-traded and where the proposed trades would occur. The application should include the following information:

(a) the jurisdictions where the issuer's securities are cease-traded and where the proposed trades would occur;

(b) details of any revocation applications currently in progress in the other jurisdictions;

(c) a description of the proposed trades and their purpose;

(d) a draft partial revocation order that includes:

(i) a condition that the applicant will obtain and provide to the relevant securities regulatory authorities signed and dated acknowledgements from all participants in the proposed trades, which clearly state that the issuance of a partial revocation order does not guarantee the issuance of a full revocation order in the future; and

(ii) a condition that the applicant will provide a copy of the CTO and partial revocation order to all participants in the proposed trades;

(e) use of proceeds information as discussed in section 4.2(2), in the case of a proposed exempt financing;

(f) if applicable, details of the exemptions the issuer intends to rely on to complete the proposed trades; and

(g) if the proposed trades are the result of a decision by a court, a copy of the relevant court order.

(2) Use of Proceeds

If the purpose of a proposed partial revocation of a CTO is to permit an issuer to carry out an exempt financing, the application and the offering document, if any, should disclose:

(a) an estimate, reasonably supported, of the amount the issuer expects to raise from the financing; and

(b) a reasonably detailed explanation of the purpose of the financing and how the issuer plans to use the funds.

The issuer should also provide in the application and any proposed offering document an estimate, reasonably supported, of the total amount the issuer will need to apply for a full revocation order. That amount would include the funds needed to prepare and file the documents required to bring the issuer's continuous disclosure up to date and pay all outstanding fees.

Appendix A

Section references for an application under local securities legislation.

British Columbia:
Securities Act: sections 164 and 171.

Alberta:
Securities Act: section 214.

Saskatchewan:
The Securities Act, 1988: subsection 158(4).

Manitoba:
Securities Act: subsection 148(1).

Ontario:
Securities Act: section 144.

Quebec:
Securities Act: section 265.

New Brunswick:
Securities Act: section 206.

Nova Scotia:
Securities Act: section 151.

Prince Edward Island:
Securities Act: section 31.

Newfoundland and Labrador:
Securities Act: section 142.1.

Yukon:
not applicable.

Northwest Territories:
Securities Act: section 43.1.

Nunavut:
Securities Act: section 43.1.

5.1.2 OSC Notice - Recission of OSC Policy 57-602 Cease Trading Orders - Applications for Partial Revocation to Permit a Securityholder to Establish a Tax Loss

ONTARIO SECURITIES COMMISSION NOTICE

RESCISSION OF ONTARIO SECURITIES COMMISSION POLICY 57-602
CEASE TRADING ORDERS – APPLICATIONS FOR PARTIAL REVOCATION TO PERMIT A SECURITYHOLDER TO ESTABLISH A TAX LOSS

National Policy 12-202

The Ontario Securities Commission (the Commission), together with other members of the Canadian Securities Administrators (the CSA), has, under section 143.8 of the *Securities Act* (Ontario), adopted National Policy 12-202 *Revocation of a Compliance-Related Cease Trade Order* (the Policy).

The Policy will be effective on July 27, 2007.

Notice of Rescission of the Prior Policy

On July 24, 2007, the Commission approved the rescission of OSC Policy 57-602 *Cease Trading Orders – Applications for Partial Revocation to Permit a Securityholder to Establish a Tax Loss* (the Prior Policy) upon the coming into force of the Policy. The guidance in the Prior Policy will be replaced by similar guidance set out in subsection 3.2(1) of the Policy.

The Prior Policy will be rescinded effective July 27, 2007, the same day that the Policy is formally adopted.

Background

A Notice and Request for Comment relating to the rescission of the Prior Policy was published in the May 11, 2007 edition of the Bulletin for a 60-day comment period. The 60-day comment period ended on July 11, 2007 and we received no comments.

Please refer your questions to any of the people listed below:

Matthew Au
Senior Accountant, Corporate Finance Branch
Ontario Securities Commission
Tel: (416) 593-8132
Fax: (416) 593-8244
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Ontario Securities Commission
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Chapter 7

Insider Reporting

This chapter is available in the print version of the OSC Bulletin, as well as as in Carswell's internet service SecuritiesScource (see www.carswell.com).

This chapter contains a weekly summary of insider transactions of Ontario reporting issuers in the System for Electronic Disclosure by Insiders (SEDI). The weekly summary contains insider transactions reported during the seven days ending Sunday at 11:59 pm.

To obtain Insider Reporting information, please visit the SEDI website (www.sedi.ca).

Chapter 8

Notice of Exempt Financings

REPORTS OF TRADES SUBMITTED ON FORMS 45-106F1 AND 45-501F1

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
06/06/2007	2	Actuant Corporation - Notes	2,659,750.00	2,500.00
03/27/2007	2	Advanced Medical Optics, Inc. - Bonds	1,542,988.80	1,332.00
06/28/2007	81	Alberta Oilsands Inc. - Common Shares	20,000,040.00	8,888,900.00
06/27/2007	1	ALESCO Preferred Funding XVI, Ltd. - Preferred Shares	5,239,500.00	5,000.00
06/20/2007	1	Altra Holdings Inc. - Common Shares	439,233.00	25,000.00
07/03/2007	19	Associated Proteins Limited Partnership - Limited Partnership Units	5,000,000.10	166,666,667.00
06/29/2007	52	Athabasca Potash Inc. - Common Shares	4,907,385.00	6,147,792.00
03/08/2007	2	AT&T Corp. - Bonds	10,071,750.00	130.00
05/21/2007	1	Bancolombia - Bonds	5,442,000.00	5,000.00
01/10/2006	1	Bank Finance & Credit Ltd. - Bonds	1,177,200.00	1,000.00
06/29/2007	5	Bayfield Ventures Corp. - Flow-Through Shares	585,000.00	975,000.00
04/27/2007 to 05/23/2007	19	Brandimensions Inc. - Preferred Shares	3,190,760.00	3,190,762.00
06/27/2007	42	Canadian Horizons (Naramata) Limited Partnership - Limited Partnership Units	1,683,200.00	16,832.00
04/25/2006	1	Cargill, Incorporated - Bonds	56,176,000.00	400.00
01/17/2006	1	Carnival Corporation - Bonds	7,029,500.00	5,000.00
07/02/2007	2	CDR SVM Co-Investor L.P. - Limited Partnership Interest	3,190,200.00	N/A
06/20/2007	3	CDR USF Co-Investor L.P. - Limited Partnership Interest	9,581,400.00	N/A
06/22/2007	60	Ceapro Inc. - Units	2,692,098.90	8,684,190.00
06/28/2007	1	Citibank International plc - N/A	62,899,628.08	N/A
06/15/2007 to 06/24/2007	15	CMC Markets Canada Inc. - Contracts for Differences	38,448.80	N/A
12/12/2006	1	CNP Assurances - Bonds	1,528,200.00	500.00
01/31/2006	1	Co-Operative Bank PLC - Bonds	214,240.00	100.00
06/26/2007	3	comScore Inc. - Common Shares	1,058,904.00	60,000.00
06/21/2007	115	Consolidated Thompson Iron Mines Limited - Common Shares	200,022,500.00	42,110,000.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
04/18/2007	1	Council of Europe - Bonds	28,220,000.00	1,000.00
04/12/2007	1	Council of Europe - Bonds	56,815,000.00	50,000.00
06/06/2007	1	Croation Bank of Reconstruction and Development - Bonds	23,289,200.00	22,000.00
06/25/2007	5	Delta Systems Inc. - Common Shares	600,000.00	3,000,000.00
10/24/2006	3	Dexia Cregem Finance - Bonds	8,497,800.00	6,000.00
06/28/2007	37	Drake Pacific Enterprises Ltd. - Units	721,300.00	180,000.00
01/18/2006	1	Eureko B.V. - Bonds	3,560,000.00	2,500.00
02/01/2007	1	European Investment Bank - Bonds	4,179,330.00	2,700.00
06/13/2007	3	FBR Capital Markets Corporation - Common Shares	785,397.34	43,311.00
06/21/2007	2	First Leaside Select Limited Partnership - Units	187,312.00	175,058.00
06/21/2007	1	First Leaside Visions Limited Partnership - Limited Partnership Units	25,000.00	25,000.00
06/26/2007	2	FMC Finance III S.A. - Notes	5,881,150.00	5,500.00
06/26/2007	3	Freegold Ventures Limited - Units	6,325,000.00	5,500,000.00
11/17/2006	1	Gaz Capital SA - Bonds	1,145,900.00	1,000.00
01/30/2007	1	General Finance BV - Bonds	1,532,800.00	1,000.00
06/25/2006 to 06/29/2006	17	General Motors Acceptance Corporation of Canada, Limited - Notes	8,292,734.81	8,292,734.00
01/30/2007	1	Generali USA Life Reassurance. - Bonds	1,181,400.00	50.00
06/21/2007	47	GeoGlobal Resources Inc. - Units	30,473,200.00	5,680,000.00
02/21/2007	1	Glitner Bank HF - Bonds	34,003,500.00	15,000.00
06/18/2007 to 06/27/2007	9	Global Trader Europe Limited - Contracts for Differences	139,172.50	90,439.00
06/20/2007	20	HBOS plc - Notes	500,000,000.00	N/A
07/06/2007	15	Healthpricer Interactive Limited - Units	1,500,000.00	7,500,000.00
06/19/2007	71	Homeland Uranium Inc. - Receipts	13,053,000.00	16,316,250.00
02/07/2007	1	HSH Norbank AG - Bonds	7,715,500.00	5,000.00
04/17/2007 to 05/02/2007	6	IGW Capital Ltd. - Bonds	92,800.00	N/A
04/17/2007 to 05/02/2007	4	IGW Investments 2 Ltd. - Common Shares	928.00	204.00
06/13/2007	43	ILOOKABOUT Holdings Inc. - Units	1,250,000.30	2,717,392.00
06/28/2007	31	Indicator Minerals Inc. - Units	4,200,000.00	6,000,000.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
07/05/2007	49	International Bethlehem Mining Corp. - Units	1,449,900.00	5,369,998.00
04/19/2007	2	International Lease Financing Corp. - Bonds	22,572,000.00	20,000.00
06/27/2007	54	Investicare Seniors Housing Corp. - Units	2,193,750.00	87.75
06/28/2007	28	IPICO inc. - Common Shares	3,424,200.00	4,891,715.00
05/18/2006	1	Istituto Credito Official - Bonds	107,595,000.00	75,000.00
06/29/2007	8	J-Pacific Gold Inc. - Units	2,000,000.00	5,000,000.00
05/16/2007	1	Jersey Central Power & Light - Bonds	4,411,600.00	4,000.00
06/26/2007	12	Jinshan Gold Mines Inc. - Units	20,000,000.00	20,000.00
06/14/2007	5	Kettle River Resources Ltd. - Common Shares	400,000.00	2,000,000.00
01/09/2006	1	Key Bank - Notes	7,053,000.00	5,000.00
06/15/2007	3	Kingwest Avenue Portfolio - Units	20,694.67	570.75
06/15/2007	1	Kingwest U.S. Equity Portfolio - Units	194,937.17	11,134.56
10/27/2006 to 01/09/2007	1	Kreditansalt Fur, Weideraufbau - Bonds	117,840,000.00	100,000.00
02/06/2007	1	Landeskreditbank - Bonds	13,796,100.00	9,000.00
06/25/2007	1	Mantis Mineral Corp. - Common Shares	0.00	1,100,000.00
06/01/2007	2	MCAN Performance Strategies - Units	280,000.00	2,042.66
06/29/2007	4	Med bioGene Inc. - Units	304,875.00	677,500.00
05/09/2007	1	Met Life, Inc. - Bonds	2,998,200.00	400.00
06/29/2007	182	Mexican Silver Mines Ltd. - Units	12,841,500.00	8,760,000.00
06/30/2007	12	MJ Innovations Ltd. - Common Shares	173,000.00	173,000.00
06/21/2007	1	Morguard Industrial Properties (I) Inc. - Common Shares	40,000.00	38,948,393.00
06/26/2007	5	Mountain Boy Minerals Ltd. - Units	1,000,000.00	1,000,000.00
06/05/2007	2	Munich Re - Bonds	25,821,000.00	360.00
01/10/2006	1	National Australia Bank Limited - Bonds	10,518,000.00	7,500.00
02/27/2007	1	National Australian Bank Limited - Bonds	8,729,250.00	7,500.00
04/03/2007	1	National Rural Utilities Cooperative Finance Corporation - Bonds	11,573,000.00	10,000.00
06/29/2007	1	NMH Holdings, Inc. - Notes	1,063,400.00	1,000.00
05/10/2007	1	Nordea Bank - Notes	119,696,000.00	1,600.00
06/29/2007	20	Nordic Diamonds Ltd. - Flow-Through Shares	1,705,000.00	2,400,000.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
06/28/2007	1	North Peace Energy Corp. - Common Shares	4,994,946.00	2,270,430.00
06/28/2007	47	North Peace Energy Corp. - Receipts	20,000,001.00	9,523,810.00
06/25/2007	2	Northern Gold Mining Inc. - Common Shares	1,500.00	7,500.00
07/04/2007	1	Notec Ventures Corp. - Flow-Through Shares	500,000.00	2,000,000.00
06/22/2007	71	NPN Investment Group Inc. - Units	600,000.00	6,000,000.00
06/21/2007	56	One Exploration Inc. - Receipts	6,000,800.00	4,616,000.00
06/21/2007	51	One Exploration Inc. - Receipts	6,001,050.00	3,637,000.00
06/28/2007	28	OptiSolar Inc. - Units	11,867,520.00	N/A
06/19/2007	1	Peru Copper Inc. - Common Shares	69,960,000.00	13,200,000.00
06/20/2007	13	Petroworth Resources Inc. - Common Shares	2,839,000.00	1,419,500.00
06/20/2007	22	Petroworth Resources Inc. - Flow-Through Shares	1,473,041.00	629,583.00
06/25/2007 to 07/05/2007	9	Powertree Limited Partnership 2 - Units	55,000.00	16.00
01/24/2006	1	Rabobank Nederland - Bonds	12,956,665.00	1,285,000.00
06/28/2007	13	Regal Energy Ltd. - Common Shares	970,260.00	3,234,200.00
06/25/2007	2	RepeatSeat Inc. - Common Shares	1,900,000.00	6,333,334.00
06/25/2007	2	RepeatSeat Inc. - Debentures	7,000,000.00	7,000,000.00
06/25/2007	30	RepeatSeat Inc. - Units	3,235,483.00	12,941,932.00
06/27/2007	2	Sanu Resources Ltd. - Common Shares	4,800,000.00	4,000,000.00
06/22/2007	1	Schooner Trust - Mortgage	29,978,710.86	N/A
11/26/2006	1	Shinsei Bank LTD - Bonds	4,388,800.00	2,000.00
06/26/2007	2	Silanis International Limited - Common Shares	3,559,755.50	21,750,000.00
07/09/2007	2	Silver Spruce Resources Inc. - Units	1,788,000.00	1,490,000.00
06/28/2007	4	Silverbirch Inc. - Common Shares	12,435.00	96,482.00
06/19/2007	8	Simpler Networks Corp. - Debentures	3,990,286.58	N/A
11/17/2006	1	Skandinaviska Enskilda Banken - Bonds	5,425,000.00	25,000.00
05/04/2006	1	SLM Corporation - Notes	140,390,000.00	100,000.00
06/15/2007	26	Sunshine Oilsands Ltd. - Units	1,685,200.00	1,532,000.00
06/28/2007	129	Surge Resources Inc. - Common Shares	10,200,000.00	12,000,000.00
06/27/2007 to 06/28/2007	390	Timbercreek Real Estate Investment Trust - Units	22,212,371.62	1,643,993.92

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
06/22/2007	24	Tres-or Resources Ltd. - Non-Flow Through Units	670,300.00	2,270,000.00
05/22/2007	3	True North Corporation - Debentures	1,700,000.00	1.00
06/26/2007	6	TrueContext Corporation - Units	267,325.00	N/A
05/30/2007	1	UBS AG - Bonds	18,037,500.00	12,500.00
05/30/2007	1	UBS AG - Bonds	36,075,000.00	25,000.00
06/26/2007	1	Ukraine - Notes	21,426,000.00	N/A
06/20/2007	39	Uracan Resources Ltd. - Units	3,800,000.00	4,000,000.00
06/29/2007	2	Valleriite CDO i P.L.C. - Notes	9,630,000.00	N/A
06/22/2007	53	Vast Exploration Inc - Units	4,319,250.00	17,277,000.00
06/27/2007	21	VMS Ventures Inc. - Flow-Through Shares	3,000,000.00	4,388,908.00
06/27/2007	5	Vnoco Inc. - Common Shares	10,099,224.00	510,000.00
07/25/2006	1	Wachovia - Bonds	28,708,000.00	400.00
06/28/2007	1	WALLBRIDGE MINING COMPANY LIMITED - Units	6,480,000.00	10,800,000.00
06/22/2007	105	Walton AZ Picacho View 1 Investment Corporation - Common Shares	2,233,220.00	223,322.00
06/22/2007	36	Walton AZ Picacho View Limited Partnership 1 - Limited Partnership Units	3,558,623.40	330,420.00
06/29/2007	157	Walton International Group Inc. - Notes	13,015,000.00	N/A
06/20/2007	60	Walton Wagner Fields Limited Partnership - Limited Partnership Units	1,196,110.04	112,353.00
12/15/2006	1	Westpac Banking Corporation - Notes	151,560,000.00	100,000.00
06/28/2007	44	Zazu Metals Corporation - Warrants	19,725,502.88	10,654,400.00

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Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
AltaGas Income Trust
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Shelf Prospectus dated July 17, 2007
Mutual Reliance Review System Receipt dated July 19, 2007
Offering Price and Description:
$500,000,000.00 - Trust Units Debt Securities
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1130295

Issuer Name:
Beutel Goodman Corporate/Provincial Active Bond Fund
Beutel Goodman Long Term Bond Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectuses dated July 16, 2007
Mutual Reliance Review System Receipt dated July 18, 2007
Offering Price and Description:
Class I Units
Underwriter(s) or Distributor(s):
Beutel Goodman Managed Funds Inc,
Promoter(s):
Beutel Goodman Managed Funds Inc.
Project #1129003

Issuer Name:
Citigroup Finance Canada Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Shelf Prospectus dated July 18, 2007
Mutual Reliance Review System Receipt dated July 19, 2007
Offering Price and Description:
$10,000,000,000.00 - Medium Term Notes (unsecured) Unconditionally guaranteed as to principal, premium (if any) and interest By CITIGROUP INC.
Underwriter(s) or Distributor(s):
TD Securities Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
Scotia Capital Inc.
Merrill Lynch Canada Inc.
National Bank Financial Inc.
Promoter(s):
-
Project #1130267

Issuer Name:
Grande Cache Coal Corporation
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated July 23, 2007
Mutual Reliance Review System Receipt dated July 23, 2007
Offering Price and Description:
$26,650,000.00 - 20,500,000 Units (Each Unit consisting of one common share and one-half of one common share purchase warrant)
Underwriter(s) or Distributor(s):
Canaccord Capital Corporation
Bolder Investment Partners, Ltd.
Salman Partners Inc.
Promoter(s):
-
Project #1131167

Issuer Name:
InnVest Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated July 18, 2007
Mutual Reliance Review System Receipt dated July 18, 2007
Offering Price and Description:
$200,008,250.00 - 16,195,000 Subscription Receipts, each representing the right to receive one Trust Unit
And $70,000,000.00 - 5.85% Extendible Convertible Unsecured Subordinated Debentures
Subscription Receipts Price: $12.35 per Subscription Receipt Price: $1,000 per Debenture
Underwriter(s) or Distributor(s):
RBC Dominion Securities
Scotia Capital Inc.
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
TD Securities Inc.
National Bank Financial Inc.
Promoter(s):
-
Project #1129720

Issuer Name:
Ivernia Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated July 18, 2007
Mutual Reliance Review System Receipt dated July 18, 2007
Offering Price and Description:
$20,006,250.00 - 12,125,000 Common Shares Price: $1.65 per Common Share
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
Paradigm Capital Inc.
Promoter(s):
-
Project #1129706

Issuer Name:
Kristina Capital Corp.
Principal Regulator - Alberta
Type and Date:
Preliminary CPC Prospectus dated July 17, 2007
Mutual Reliance Review System Receipt dated July 19, 2007
Offering Price and Description:
$400,000.00 - 2,000,000 common shares Price: $0.20 per common share
Underwriter(s) or Distributor(s):
Research Capital Corporation
Promoter(s):
Murray K. Atkins
Gordon D. Anderson
Project #1130328

Issuer Name:
MGM Energy Corp.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated July 23, 2007
Mutual Reliance Review System Receipt dated July 23, 2007
Offering Price and Description:
$ * - * Common Shares and * Flow-Through Shares Price: $ * per Common Share and Flow-Through Share
Underwriter(s) or Distributor(s):
Cormark Securities Inc.
Peters & Co. Limited
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
FirstEnergy Capital Corp.
TD Securities Inc.
Promoter(s):
-
Project #1130945

Issuer Name:
Neo Material Technologies Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated July 20, 2007
Mutual Reliance Review System Receipt dated July 20, 2007
Offering Price and Description:
$73,600,000.00 - 16,000,000 Common Shares Price: $4.60 per Common Share
Underwriter(s) or Distributor(s):
GMP Securities L.P.
Clarus Securities Inc.
Cormark Securities Inc.
Paradigm Capital Inc.
Raymond James Ltd.
Promoter(s):
-
Project #1130538

Issuer Name:
Niko Resources Ltd.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated July 19, 2007
Mutual Reliance Review System Receipt dated July 19, 2007
Offering Price and Description:
$ * - * Common Shares Price: $ * per Common Share
Underwriter(s) or Distributor(s):
Canaccord Capital Corporation
FirstEnergy Capital Corp.
Tristone Capital Inc.
UBS Securities Canada Inc.
Cormark Securities Inc.
Scotial Capital Inc.
Maison Placements Canada Inc.
Fraser Mackenzie Limited
Promoter(s):
-
Project #1130142

Issuer Name:
Niko Resources Ltd.
Principal Regulator - Alberta
Type and Date:
Amended and Restated Preliminary Short Form Prospectus dated July 20, 2007
Mutual Reliance Review System Receipt dated July 20, 2007
Offering Price and Description:
$500,010,000.00 - 4,762,000 COMMON SHARES Price: $105.00 per Common Share
Underwriter(s) or Distributor(s):
Canaccord Capital Corporation
FirstEnergy Capital Corp.
Tristone Capital Inc.
UBS Securities Canada Inc.
Cormark Securities Inc.
Scotial Capital Inc.
Maison Placements Canada Inc.
Fraser Mackenzie Limited
Promoter(s):
-
Project #1130142

Issuer Name:
Northern Gold Mining Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Prospectus dated July 18, 2007
Mutual Reliance Review System Receipt dated July 19, 2007
Offering Price and Description:
Minimum Offering: $3,000,000.00 of Flow-Through Units and/or Regular Units; Maximum Offering: $5,000,000.00 of Flow-Through Units and/or Regular Units $0.50 per Regular Unit $0.60 per Flow-Through Unit and 8,262,500 Common Shares and 6,183,750 Warrants issuable upon the exercise of
8,262,500 previously issued Special Warrants
Underwriter(s) or Distributor(s):
Evergreen Capital Partners Inc.
Promoter(s):
Martin R. Shefsky
Project #1130013

Issuer Name:
Pure Industrial Real Estate Trust
Principal Regulator - British Columbia
Type and Date:
Amended and Restated Preliminary Prospectus dated July 17, 2007
Mutual Reliance Review System Receipt dated July 18, 2007
Offering Price and Description:
$ * - * Units Price: $ * per Unit
Underwriter(s) or Distributor(s):
Dundee Securities Corporation
RBC Dominion Securities Inc.
BMO Capital Markets Inc.
Raymond James Ltd.
Blackmont Capital Inc.
Bieber Securities Inc.
Desjardins Securities Inc.
Sora Group Wealth Advisors Inc.
MGI Securities Inc.
Promoter(s):
Sunstone Industrial Advisors Inc.
Project #1128161

Issuer Name:
RBC Private EAFE Equity Pool II
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated July 19, 2007
Mutual Reliance Review System Receipt dated July 19, 2007
Offering Price and Description:
(Series O and F Units)
Underwriter(s) or Distributor(s):
RBC Asset Management Inc.
RBC Asset Management Inc.
The Royal Trust Company
Promoter(s):
RBC Asset Management Inc.
Project #1130122

Issuer Name:
Saskatchewan Wheat Pool Inc.
Principal Regulator - Saskatchewan
Type and Date:
Preliminary Short Form Prospectus dated July 18, 2007
Mutual Reliance Review System Receipt dated July 19, 2007
Offering Price and Description:
$200,000,000.00 - * % Senior Notes Series 2007-1, due *, *
Underwriter(s) or Distributor(s):
TD Securities Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
Genuity Capital Markets
Promoter(s):
-
Project #1130000

Issuer Name:
Sprott Small Cap Equity Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated July 18, 2007
Mutual Reliance Review System Receipt dated July 18, 2007
Offering Price and Description:
Series A, F and I Units
Underwriter(s) or Distributor(s):
Sprott Asset Management Inc.
Promoter(s):
Sprott Asset Management Inc.
Project #1129538

Issuer Name:
TayCon Capital Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary CPC Prospectus dated July 20, 2007
Mutual Reliance Review System Receipt dated July 23, 2007
Offering Price and Description:
Minimum Offering: $300,000.00 or 1,000,000 Common Shares; Maximum Offering: $510,000.00 or 1,700,000 Common Shares Price: $0.30 per Common Share Minimum Subscription: 4,000 Common Shares ($1,200.00)
Underwriter(s) or Distributor(s):
Union Securities Ltd.
Promoter(s):
-
Project #1130915

Issuer Name:
The Medipattern Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated July 18, 2007
Mutual Reliance Review System Receipt dated July 18, 2007
Offering Price and Description:
$5,203,000.00 - 4,730,000 Common Shares Price: $1.10 per Common Share
Underwriter(s) or Distributor(s):
Research Capital Corporation
Promoter(s):
-
Project #1129677

Issuer Name:
VRB Power Systems Inc.
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated July 24, 2007
Mutual Reliance Review System Receipt dated July 24, 2007
Offering Price and Description:
$12,540,000.00 - 33,000,000 Common Shares Price: $0.38 per Common Share
Underwriter(s) or Distributor(s):
Cormark Securities Inc.
Research Capital Corporation
PI Financial Corp.
Promoter(s):
-
Project #1131373

Issuer Name:
Zarlink Semiconductor Inc.
Principal Regulator - Ontario
Type and Date:
Amended and Restated Preliminary Prospectus dated July 18, 2007
Mutual Reliance Review System Receipt dated July 18, 2007
Offering Price and Description:
$75,000,000.00 - 75,000 Subscription Receipts, each representing the right to receive Cdn$1,000 principal amount of 6.0% Convertible Unsecured Subordinated Debentures
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
National Bank Financial Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
Promoter(s):
-
Project #1128797

Issuer Name:
49 North 2007 Resource Flow-Through Limited Partnership
Principal Regulator - Saskatchewan
Type and Date:
Final Prospectus dated July 19, 2007
Mutual Reliance Review System Receipt dated July 20, 2007
Offering Price and Description:
$15,000,000.00 (maximum offering) - 1,500,000 units @ $10.00/unit; $3,000,000.00 (minimum offering) - 300,000 units @ $10.00/unit
Underwriter(s) or Distributor(s):
Union Securities Ltd.
Canaccord Capital Corporation
HSBC Securities (Canada) Inc.
Raymond James Ltd.
Wellington West Capital Inc.
Desjardins Securities Inc.
Research Capital Corporation
Bureonvest Securities Limited
Industrial Alliance Securities Inc.
Queensbury Securities Inc.
Promoter(s):
49 North 2006 Resource Fund Inc.
Project #1071842

Issuer Name:
Acker Finley Canada Focus Fund
Principal Regulator - Ontario
Type and Date:
Amended and Restating the Simplified Prospectus and Annual Information Form dated July 13, 2007
Mutual Reliance Review System Receipt dated July 19, 2007
Offering Price and Description:
Units
Underwriter(s) or Distributor(s):
Acker Finley Asset Management Inc.
Promoter(s):
-
Project #1084248

Issuer Name:
Acuity Small Cap Corporation
Principal Regulator - Ontario
Type and Date:
Final Prospectus dated July 23, 2007
Mutual Reliance Review System Receipt dated July 24, 2007
Offering Price and Description:
Each Unit consists of a Class A Share and one full Class A Share Purchase Warrant Maximum Offering: $125,000,000.00 (12,500,000 Units); Minimum Offering: $25,000,000.00 (2,500,000 Units) Price: $10 per unit Minimum Purchase: 200 Units
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
Canaccord Capital Corporation
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
TD Securities Inc.
Dundee Securities Corporation
HSBC Securities (Canada) Inc.
Raymond James Ltd.
Berkshire Securities Inc.
Blackmont Capital Inc.
Desjardins Securities Inc.
GMP Securities L.P.
IPC Securities Corporation
Richardson Partners Financial Limited
Wellington West Capital Inc.
Promoter(s):
Acuity Funds Ltd.
Project #1116252

Issuer Name:
AMERICAN COPPER CORPORATION
Principal Regulator - British Columbia
Type and Date:
Final Prospectus dated July 19, 2007
Mutual Reliance Review System Receipt dated July 23, 2007
Offering Price and Description:
$1,600,000.00 - Up to 4,000,000 Units $0.40 per Unit
Underwriter(s) or Distributor(s):
Canaccord Capital Corporation
Promoter(s):
Robert Eadie
Project #1082264

Issuer Name:
Canadian Royalties Inc.
Principal Regulator - Quebec
Type and Date:
Final Short Form Prospectus dated July 19, 2007
Mutual Reliance Review System Receipt dated July 20, 2007
Offering Price and Description:
$75,075,000.00 - 27,300,000 Common Shares Price: $2.75 per Common Share
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
Desjardins Securities Inc.
Raymond James Ltd.
Promoter(s):
-
Project #1127192

Issuer Name:
CI Alpine Growth Equity Fund (Class A and F Units)
CI American Equity Fund (Class A, F and I Units)
CI American Equity Corporate Class (A and F Shares)
CI American Managers Corporate Class (A, F and I Shares)
CI American Small Companies Fund (Class A, F and I Units)
CI American Small Companies Corporate Class (A and F Shares)
CI American Value Fund (Class A, F, I and Insight Units)
CI American Value Corporate Class (A, F and I Shares)
CI Can-Am Small Cap Corporate Class (A, F and I Shares)
CI Canadian Investment Fund (Class A, F, I and Insight Units)
CI Canadian Investment Corporate Class (A, F and I Shares)
CI Canadian Small/Mid Cap Fund (Class A, F and I Units)
CI Emerging Markets Fund (Class A, F and I Units)
CI Emerging Markets Corporate Class (A, F and I Shares)
CI European Fund (Class A, F and I Units)
CI European Corporate Class (A and F Shares)
CI Global Fund (Class A, F, I and Insight Units)
CI Global Corporate Class (A, F and I Shares)
CI Global Biotechnology Corporate Class (A and F Shares)
CI Global Consumer Products Corporate Class (A, F and I Shares)
CI Global Energy Corporate Class (A and F Shares)
CI Global Financial Services Corporate Class (A, F and I Shares)
CI Global Health Sciences Corporate Class (A, F and I Shares)
CI Global High Dividend Advantage Fund (Class A, F and I Units)
CI Global High Dividend Advantage Corporate Class (A, F and I Shares)
CI Global Managers Corporate Class (A, F and I Shares)
CI Global Small Companies Fund (Class A, F, I and Insight Units)
CI Global Small Companies Corporate Class (A and F Shares)
CI Global Science & Technology Corporate Class (A, F and I Shares)
CI Global Value Fund (Class A, F and I Units)
CI Global Value Corporate Class (A, F and I Shares)
CI International Fund (Class A, F, I and Insight Units)
CI International Corporate Class (A and F Shares)
CI International Value Fund (Class A, F, I and Insight Units)
CI International Value Corporate Class (A, F and I Shares)
CI Japanese Corporate Class (A and F Shares)
CI Pacific Fund (Class A, F and I Units)
CI Pacific Corporate Class (A and F Shares)
CI Value Trust Corporate Class (A, F, I, Y, Z and Insight Shares)
Harbour Fund (Class A, F and I Units)
Harbour Corporate Class (A, F and I Shares)
Harbour Foreign Equity Corporate Class (A, F and I Shares)
Knight Bain Pure Canadian Equity Fund (Class A, F and I Units)
(formerly Lakeview KBSH Large Cap Explorer Fund (Series A, F and O Units))
Knight Bain Small Cap Fund (Class A, F and I Units)

(formerly Lakeview KBSH Small Cap Explorer Fund (Series A, F and O Units))
Signature Canadian Resource Fund (Class A and F Units)
Signature Canadian Resource Corporate Class (A and F Shares)
Signature Select Canadian Fund (Class A, F, I, Z and Insight Units)
Signature Select Canadian Corporate Class (A, F and I Shares)
Synergy American Fund (Class A, F and I Units)
Synergy American Corporate Class (A and F Shares)
Synergy Canadian Corporate Class (A, F, I and Insight Shares)
Synergy Canadian Style Management Corporate Class (A, F and I Shares)
Synergy Focus Canadian Equity Fund (Class A and F Units)
Synergy Focus Global Equity Fund (Class A and F Units)
Synergy Global Corporate Class (A, F and I Shares)
Synergy Global Style Management Corporate Class (A and F Shares)
CI Canadian Asset Allocation Fund (Class A, F and I Units)
CI Global Balanced Corporate Class (A, F and I Shares)
CI International Balanced Fund (Class A, F and I Units)
CI International Balanced Corporate Class (A and F Shares)
Harbour Foreign Growth & Income Corporate Class (A, F and I Shares)
Harbour Growth & Income Fund (Class A, F, I and Z Units)
Harbour Growth & Income Corporate Class (A, F and I Shares)
Knight Bain Diversified Monthly Income Fund (Class A, F and I Units)
(formerly Lakeview KBSH Equity Income Explorer Fund (Series A, F and O Units))
Signature Canadian Balanced Fund (Class A, F, I and Z Units)
Signature Global Income & Growth Fund (Class A, F and I Units)
Signature Global Income & Growth Corporate Class (A, F and I Shares)
Signature Income & Growth Fund (Class A, F and I Units)
Signature Income & Growth Corporate Class (A, F and I Shares)
Synergy Tactical Asset Allocation Fund (Class A, F and I Units)
CI Canadian Bond Fund (Class A, F, I and Insight Units)
CI Canadian Bond Corporate Class (A, F and I Shares)
CI Short-Term Bond Fund (Class A, F and I Units)
CI Long-Term Bond Fund (Class A and F Units)
CI Money Market Fund (Class A, F, I, M and Insight Units)
CI US Money Market Fund (Class A Units)
CI Short-Term Corporate Class (A, F and I Shares)
CI Short-Term US$ Corporate Class (A Shares)
CI Global Bond Fund (Class A, F, I and Insight Units)
CI Global Bond Corporate Class (A and F Shares)
CI Mortgage Fund (Class A and F Units)
Knight Bain Canadian Bond Fund (Class A, F and I Units)
(formerly Lakeview KBSH Diversified Income Explorer Fund)
Knight Bain Corporate Bond Fund (Class A, F and I Units)
(formerly Lakeview KBSH Premium Bond Explorer Fund (Series A, F and O Units))
Signature Corporate Bond Fund (Class A, F, I and Insight Units)
Signature Corporate Bond Corporate Class (A, F and I Shares)
Signature Dividend Fund (Class A, F, I, Y and Z Units)
Signature Dividend Corporate Class (A, F and I Shares)
Signature High Income Fund (Class A, F and I Units)
Signature High Income Corporate Class (A, F and I Shares)
Portfolio Series Income Fund (Class A, F and I Units)
Portfolio Series Conservative Fund (Class A, F and I Units)
Portfolio Series Balanced Fund (Class A, F and I Units)
Portfolio Series Conservative Balanced Fund (Class A, F and I Units)
Portfolio Series Balanced Growth Fund (Class A, F and I Units)
Portfolio Series Growth Fund (Class A, F and I Units)
Portfolio Series Maximum Growth Fund (Class A, F and I Units)
Select 100i Managed Portfolio Corporate Class (A, F, W and I Shares)
Select 80i20e Managed Portfolio Corporate Class (A, F, W and I Shares)
Select 70i30e Managed Portfolio Corporate Class (A, F, W and I Shares)
Select 60i40e Managed Portfolio Corporate Class (A, F, W and I Shares)
Select 50i50e Managed Portfolio Corporate Class (A, F, W and I Shares)
Select 40i60e Managed Portfolio Corporate Class (A, F, W and I Shares)
Select 30i70e Managed Portfolio Corporate Class (A, F, W and I Shares)
Select 20i80e Managed Portfolio Corporate Class (A, F, W and I Shares)
Select 100e Managed Portfolio Corporate Class (A, F, W and I Shares)
Select Income Managed Fund (Class I Units)
Select Canadian Equity Managed Fund (Class I Units)
Select U.S Equity Managed Fund (Class I Units)
Select International Equity Managed Fund (Class I Units)
Select Income Managed Corporate Class (A, F, W and I Shares)
Select Canadian Equity Managed Corporate Class (A, F, W and I Shares)
Select U.S.Equity Managed Corporate Class (A, F, W and I Shares)
Select International Equity Managed Corporate Class (A, F, W and I Shares)
Select Staging Fund (A, F, W and I Units)
Principal Regulator - Ontario

Type and Date:
Final Simplified Prospectuses dated July 20, 2007
Mutual Reliance Review System Receipt dated July 23, 2007

Offering Price and Description:
-

Underwriter(s) or Distributor(s):
-

Promoter(s):
-

Project #1123716, 1030449

Issuer Name:
ClareGold Trust
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated July 20, 2007
Mutual Reliance Review System Receipt dated July 23, 2007
Offering Price and Description:
$445,073,000.00 (Approximate) Commercial Mortgage Pass-Through Certificates, Series 2007-2
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
Promoter(s):
Canadian Imperial Bank of Commerce
Project #1125739

Issuer Name:
Dynamic Global Energy Class
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus and Annual Information Form dated July 17, 2007
Mutual Reliance Review System Receipt dated July 19, 2007
Offering Price and Description:
Series A, F, I and O Shares @ Net asset Value
Underwriter(s) or Distributor(s):
Goodman & Company, Investment Counsel Ltd.
Goodman & Company, Investment Counsel Ltd.
Promoter(s):
-
Project #1117550

Issuer Name:
Dynamic Global Infrastructure Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated July 17, 2007
Mutual Reliance Review System Receipt dated July 19, 2007
Offering Price and Description:
Series A, F, I, On and T Units @ Net Asset Value
Underwriter(s) or Distributor(s):
Goodman & Company, Investment Counsel Ltd.
Promoter(s):
Goodman & Company, Investment Counsel Ltd.
Project #1117548

Issuer Name:
First Asset PowerGen Fund
Principal Regulator - Ontario
Type and Date:
Final Prospectus dated July 19, 2007
Mutual Reliance Review System Receipt dated July 20, 2007
Offering Price and Description:
$700,700.00 Maximum (35,035 Units)
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
CIBC World Markets Inc.
Promoter(s):
First Asset Investment Management Inc.
Project #1119815

Issuer Name:
Foraco International SA
Principal Regulator - Ontario
Type and Date:
Final Prospectus dated July 23, 2007
Mutual Reliance Review System Receipt dated July 24, 2007
Offering Price and Description:
$34,946,088.00 - 14,560,870 Common Shares Price: $2.40 per Common Share
Underwriter(s) or Distributor(s):
Research Capital Corporation
CIBC World Markets Inc.
Canaccord Capital Corporation
Promoter(s):
-
Project #1119153

Issuer Name:
Fortune Minerals Limited
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated July 19, 2007
Mutual Reliance Review System Receipt dated July 19, 2007
Offering Price and Description:
$25,050,000.00 - 8,350,000 Units Price: $3.00 per Unit
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
Desjardins Securities Inc.
Canccord Capital Corporation
Promoter(s):
-
Project #1127034

Issuer Name:
HANWEI ENERGY SERVICES CORP.
Principal Regulator - British Columbia
Type and Date:
Final Short Form Prospectus dated July 19, 2007
Mutual Reliance Review System Receipt dated July 19, 2007
Offering Price and Description:
$45,000,000.00 - 9,000,000 Common Shares Issuable on Exercise of 9,000,000 Special Warrants 540,000 Compensation Options Issuable on Exercise of 540,000 Compensation Warrants Price: $5.00 per Special Warrant
Underwriter(s) or Distributor(s):
Cannacord Capital Corporation
GMP Securities L.P.
Research Capital Corporation
Promoter(s):
-
Project #1127670

Issuer Name:
Investors Canadian Equity Class
Investors Canadian Growth Class
Investors Canadian Large Cap Value Class
Investors Canadian Small Cap Class
Investors Canadian Small Cap Growth Class
Investors Quebec Enterprise Class
Investors Summa Class
IG AGF Canadian Diversified Growth Class
IG AGF Canadian Growth Class
IG Beutel Goodman Canadian Equity Class
IG Bissett Canadian Equity Class
IG FI Canadian Equity Class
IG Mackenzie Maxxum Canadian Equity Growth Class
Investors U.S. Large Cap Growth Class
Investors U.S. Large Cap Value Class
Investors U.S. Opportunities Class
Investors U.S. Small Cap Class
IG AGF U.S. Growth Class
IG FI U.S. Equity Class
IG Goldman Sachs U.S. Equity Class
IG Mackenzie Universal U.S. Growth Leaders Class
Investors European Equity Class
Investors European Mid-Cap Equity Class
Investors Global Class
Investors Greater China Class
Investors International Small Cap Class
Investors Japanese Equity Class
Investors North American Equity Class
Investors Pacific International Class
Investors Pan Asian Growth Class
IG AGF International Equity Class
IG FI Global Equity Class
IG Mackenzie Ivy European Class
IG Mackenzie Ivy Foreign Equity Class
IG Mackenzie Universal Emerging Markets Class
IG Mackenzie Universal Global Growth Class
IG Templeton International Equity Class
Investors Global Consumer Companies Class
Investors Global Financial Services Class
Investors Global Health Care Class
Investors Global Infrastructure Class
Investors Global Natural Resources Class
Investors Global Science & Technology Class
Investors Mergers & Acquisitions Class
Investors Managed Yield Class
Investors Short Term Capital Yield Class
Investors Capital Yield Class
Principal Regulator - Manitoba
Type and Date:
Final Simplified Prospectuses dated July 6, 2007
Mutual Reliance Review System Receipt dated July 20, 2007
Offering Price and Description:
Series A Shares and Series B Shares @ Net Asset Value
Underwriter(s) or Distributor(s):
Investors Group Securities Inc.
Investors Group Financial Services Inc.
Les Services Investors Limitee
Promoter(s):
-
Project #1110488

Issuer Name:
Investors Group Income Fund
Investors Group Short Term Income Fund
Principal Regulator - Manitoba
Type and Date:
Final Simplified Prospectuses dated July 6, 2007
Mutual Reliance Review System Receipt dated July 20, 2007
Offering Price and Description:
Series O Units @ Net Asset Value
Underwriter(s) or Distributor(s):
Investors Group Financial Services Inc.
Promoter(s):
I.G. Investment Management Ltd.
Project #1110478

Issuer Name:
iProfile Canadian Equity Pool
iProfile Emerging Markets Pool
iProfile Fixed Income Pool
iProfile International Equity Pool
iProfile Money Market Pool
iProfile U.S. Equity Pool
Principal Regulator - Manitoba
Type and Date:
Final Simplified Prospectuses dated July 6, 2007
Mutual Reliance Review System Receipt dated July 20, 2007
Offering Price and Description:
Mutual Fund Units @ Net Asset Value
Underwriter(s) or Distributor(s):
Investors Group Securities Inc.
Investors Group Financial Services Inc.
Promoter(s):
-
Project #1114563

Issuer Name:
Kangaroo Media Inc.
Principal Regulator - Quebec
Type and Date:
Final Short Form Prospectus dated July 17, 2007
Mutual Reliance Review System Receipt dated July 18, 2007
Offering Price and Description:
$20,000,000.00 New Issue (6,557,377 Common Shares); $1,830,000.00 Secondary Offering (600,000 Common Shares) Price: $3.05 per Common Share
Underwriter(s) or Distributor(s):
Raymond James Ltd.
Desjardins Securities Inc.
Loewen, Ondaatje, McCutcheon Limited
Paradigm Capital Inc.
GMP Securities L.P.
Cormark Securities Inc.
Promoter(s):
-
Project #1122696

Issuer Name:
Lakeview Disciplined Leadership Canadian Equity Fund (Class A, F and I Units)
Lakeview Disciplined Leadership U .S. Equity Fund (Class A, F and I Units)
Lakeview Disciplined Leadership High Income Fund (Class A, F and I Units)
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated July 20, 2007
Mutual Reliance Review System Receipt dated July 23, 2007
Offering Price and Description:
Class A, F and I Units @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
Lakeview Asset Management Inc.
Project #1123419

Issuer Name:
LifePoints Balanced Income Portfolio (Class B, F, F-5 and I-5 Units)
LifePoints Balanced Portfolio (Class B, F, F-6 and I-6 Units)
LifePoints Balanced Growth Portfolio (Class B, F, F-7 and I-7 Units)
LifePoints Long-Term Growth Portfolio (Class B and F Units)
LifePoints All Equity Portfolio (Class B and F Units)
Class B Units of:
LifePoints 2010 Portfolio
LifePoints 2020 Portfolio
LifePoints 2030 Portfolio
Russell Canadian Fixed Income Fund
Russell Canadian Equity Fund
Russell US Equity Fund
Russell Overseas Equity Fund
Russell Global Equity Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated July 19, 2007
Mutual Reliance Review System Receipt dated July 24, 2007
Offering Price and Description:
Mutual fund units at net asset value
Underwriter(s) or Distributor(s):
Russell Investments Canada Limited
Promoter(s):
Russell Investments Canada Limited
Project #1120087

Issuer Name:
Mackenzie Universal Global Infrastructure Fund
Mackenzie Universal Global Property Income Fund
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated July 9, 2007 to the Simplified Prospectuses and Annual Information Forms dated June 21, 2007
Mutual Reliance Review System Receipt dated July 18, 2007
Offering Price and Description:
Series A, F, I , O, P, T6 and T8 Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
Mackenzie Financial Corporation
Project #1109729

Issuer Name:
MEGA Brands Inc.
Principal Regulator - Quebec
Type and Date:
Final Short Form Prospectus dated July 17, 2007
Mutual Reliance Review System Receipt dated July 18, 2007
Offering Price and Description:
C$78,347,500.00 - 3,850,000 Common Shares Price: C$20.35 per Common Share
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
Promoter(s):
-
Project #1127112

Issuer Name:
Prelim Capital Inc.
Principal Regulator - Ontario
Type and Date:
Final CPC Prospectus dated July 16, 2007
Mutual Reliance Review System Receipt dated July 18, 2007
Offering Price and Description:
$510,000.00 or 1,700,000 common shares Price: $0.30 per common share
Underwriter(s) or Distributor(s):
Blackmont Capital Inc.
Promoter(s):
James S. Borland
Project #1120719

Issuer Name:
Rocky Mountain Resources Corp.
Principal Regulator - British Columbia
Type and Date:
Final Prospectus dated July 19, 2007
Mutual Reliance Review System Receipt dated July 23, 2007
Offering Price and Description:
$2,500,000.00 - Up to 2,500,000 Common Shares Price: $1.00 per Common Share
Underwriter(s) or Distributor(s):
Haywood Securities Inc.
Promoter(s):
-
Project #1121750

Issuer Name:
TD Canadian T-Bill Fund (Investor Series Units)
TD Canadian Money Market Fund (Investor Series and Institutional Series Units)
TD Premium Money Market Fund (Investor Series Units)
TD U.S. Money Market Fund (Investor Series, Institutional Series and Premium Series Units)
TD Short Term Bond Fund (Investor Series, Institutional Series and O-Series Units)
TD Mortgage Fund (Investor Series and Institutional Series Units)
TD Canadian Bond Fund (Investor Series, Institutional Series and O-Series Units)
TD Canadian Core Plus Bond Fund (Investor Series and Institutional Series Units)
TD Corporate Bond Capital Yield Fund (Investor Series and Institutional Series Units)
TD Real Return Bond Fund (Investor Series, Institutional Series Units and O-Series Units)
TD Global Bond Fund (Investor Series and Institutional Series Units)
TD High Yield Income Fund (Investor Series and Institutional Series Units)
TD Monthly Income Fund (Investor Series, O-Series and H-Series Units)
TD Balanced Income Fund (Investor Series and Institutional Series Units)
TD Diversified Monthly Income Fund (Investor Series and H-Series Units)
(formerly TD Monthly High Income Fund)
TD Balanced Growth Fund (Investor Series and Institutional Series Units)
TD Global Monthly Income Fund (Investor Series Units)
TD Dividend Income Fund (Investor Series, Institutional Series, O-Series and H-Series Units)
TD Dividend Growth Fund (Investor Series, Institutional Series, O-Series and H-Series Units)
TD Income Trust Capital Yield Fund (Investor Series and Institutional Series Units)
TD Canadian Blue Chip Equity Fund (Investor Series, Institutional Series Units and O-Series Units)
TD Canadian Equity Fund (Investor Series and Institutional Series Units)
TD Canadian Value Fund (Investor Series and Institutional Series Units)
TD Canadian Small-Cap Equity Fund (Investor Series and Institutional Series Units)
TD North American Dividend Fund (Investor Series and Institutional Series Units)
TD U.S. Blue Chip Equity Fund (Investor Series and Institutional Series Units)
TD U.S. Blue Chip Equity Currency Neutral Fund (Investor Series Units)
TD U.S. Quantitative Equity Fund (Investor Series and Institutional Series Units)
TD U.S. Large-Cap Value Fund (Investor Series and Institutional Series Units)
TD U.S. Large-Cap Value Currency Neutral Fund (Investor Series Units)
TD U.S. Mid-Cap Growth Fund (Investor Series and Institutional Series Units)
TD U.S. Mid-Cap Growth Currency Neutral Fund (Investor Series Units)
TD U.S. Small-Cap Equity Fund (Investor Series, Institutional Series and O-Series Units)
TD U.S. Small-Cap Equity Currency Neutral Fund (Investor Series Units)
TD Global Dividend Fund (Investor Series, Institutional Series and H-Series Units)
TD Global Value Fund (Investor Series and Institutional Series Units)
TD Global Select Fund (Investor Series and Institutional Series Units)
TD Global Multi-Cap Fund (Investor Series and Institutional Series Units)
TD Global Sustainability Fund (Investor Series Units)
TD International Equity Fund (Investor Series and Institutional Series Units)
TD International Equity Growth Fund (Investor Series and Institutional Series Units)
TD European Growth Fund (Investor Series and Institutional Series Units)
TD Japanese Growth Fund (Investor Series Units)
TD Asian Growth Fund (Investor Series and Institutional Series Units)
TD Pacific Rim Fund (Investor Series Units)
TD Emerging Markets Fund (Investor Series and Institutional Series Units)
TD Latin American Growth Fund (Investor Series Units)
TD Resource Fund (Investor Series and Institutional Series Units)
TD Energy Fund (Investor Series Units)
TD Precious Metals Fund (Investor Series Units)
TD Entertainment & Communications Fund (Investor Series and Institutional Series Units)
TD Science & Technology Fund (Investor Series and Institutional Series Units)
TD Health Sciences Fund (Investor Series and Institutional Series Units)
TD Canadian Bond Index Fund (Investor Series, e-Series, Institutional Series and O-Series Units)
TD Balanced Index Fund (Investor Series and e-Series Units)
TD Canadian Index Fund (Investor Series, e-Series, Institutional Series and O-Series Units)
TD Dow Jones Industrial Average Index Fund (Investor Series and e-Series Units)
TD U.S. Index Fund (Investor Series, e-Series, Institutional Series and O-Series Units)
TD U.S. Index Currency Neutral Fund (Investor Series, e-Series and Institutional Series Units)
TD Nasdaq Index Fund (Investor Series and e-Series Units)
TD International Index Fund (Investor Series, e-Series, Institutional Series and O-Series Units)
TD International Index Currency Neutral Fund (Investor Series, e-Series and Institutional Series Units)
TD European Index Fund (Investor Series and e-Series Units)
TD Japanese Index Fund (Investor Series and e-Series Units)
TD Income Advantage Portfolio (Investor Series and H-Series Units)
TD U.S. Equity Advantage Portfolio (Investor Series Units)
TD U.S. Equity Advantage Currency Neutral Portfolio (Investor Series Units)

TD Global Equity Advantage Portfolio (Investor Series Units)

Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated July 23, 2007
Mutual Reliance Review System Receipt dated July 24, 2007
Offering Price and Description:
Investor Series Units, e-Series Units, Institutional Series Units, O-Series Units, Premium Series Units and H-Series Units @ Net Asset Value
Underwriter(s) or Distributor(s):
TD Investments Services Inc.
TD Investment Services Inc. (for Investor Series units)
TD Investment Services Inc. (for Investor Series and e-Series units)
TD Investment Services Inc.(for Investor Series units)
TD Investment Services Inc. (for Investor Series and e-Series Units)
TD Asset Management Inc. (for Investor Series units)
TD Investment Services Inc. (for Investor Series and Premium Series units)
Promoter(s):
TD Asset Management Inc.
Project #1118305

Issuer Name:
Advisor Series, F-Series, T-Series and S-Series Units (as indicated) of:
TD Canadian Money Market Fund (Advisor Series and F-Series Units)
TD Premium Money Market Fund (F-Series Units)
TD Short Term Bond Fund (Advisor Series and F-Series Units)
TD Canadian Bond Fund (Advisor Series and F-Series Units)
TD Canadian Core Plus Bond Fund (Advisor Series and F-Series Units)
TD Corporate Bond Capital Yield Fund (Advisor Series and F-Series Units)
TD Real Return Bond Fund (Advisor Series and F-Series Units)
TD Global Bond Fund (Advisor Series and F-Series Units)
TD High Yield Income Fund (Advisor Series and F-Series Units)
TD Monthly Income Fund
TD Balanced Income Fund (Advisor Series and F-Series Units)
TD Diversified Monthly Income Fund
(formerly TD Monthly High Income Fund)
TD Balanced Growth Fund (Advisor Series and F-Series Units)
TD Global Monthly Income Fund (Advisor Series and F-Series Units)
TD Dividend Income Fund
TD Dividend Growth Fund
TD Income Trust Capital Yield Fund (Advisor Series and F-Series Units)
TD Canadian Blue Chip Equity Fund (Advisor Series and F-Series Units)
TD Canadian Equity Fund (Advisor Series and F-Series Units)
TD Canadian Value Fund (Advisor Series and F-Series Units)
TD Canadian Small-Cap Equity Fund (Advisor Series and F-Series Units)
TD North American Dividend Fund (Advisor Series and F-Series Units)
TD U.S. Blue Chip Equity Fund (Advisor Series and F-Series Units)
TD U.S. Blue Chip Equity Currency Neutral Fund (Advisor Series and F-Series Units)
TD U.S. Large-Cap Value Fund (Advisor Series and F-Series Units)
TD U.S. Large-Cap Value Currency Neutral Fund (Advisor Series and F-Series Units)
TD U.S. Mid-Cap Growth Fund (Advisor Series and F-Series Units)
TD U.S. Mid-Cap Growth Currency Neutral Fund (Advisor Series and F-Series Units)
TD U.S. Small-Cap Equity Fund (Advisor Series and F -Series Units)
TD U.S. Small-Cap Equity Currency Neutral Fund (Advisor Series and F-Series Units)
TD Global Dividend Fund
TD Global Value Fund (Advisor Series and F-Series Units)
TD Global Select Fund (Advisor Series and F-Series Units)
TD Global Multi-Cap Fund (Advisor Series and F-Series Units)

TD Global Sustainability Fund (Advisor Series and F-Series Units)
TD International Equity Fund (Advisor Series and F-Series Units)
TD International Equity Growth Fund (Advisor Series and F-Series Units)
TD Japanese Growth Fund (Advisor Series and F-Series Units)
TD Asian Growth Fund (Advisor Series and F-Series Units)
TD Emerging Markets Fund (Advisor Series and F-Series Units)
TD Latin American Growth Fund (Advisor Series and F-Series Units)
TD Resource Fund (Advisor Series and F-Series Units)
TD Energy Fund (Advisor Series and F-Series Units)
TD Precious Metals Fund (Advisor Series and F-Series Units)
TD Entertainment & Communications Fund (Advisor Series and F-Series Units)
TD Science & Technology Fund (Advisor Series and F-Series Units)
TD Health Sciences Fund (Advisor Series and F-Series Units)
TD Canadian Bond Index Fund (F-Series Units)
TD Canadian Index Fund (F-Series Units)
TD Dow Jones Industrial Average Index Fund (F-Series Units)
TD U.S. Index Fund (F-Series Units)
TD U.S. Index Currency Neutral Fund (F-Series Units)
TD Nasdaq Index Fund (F-Series Units)
TD International Index Fund (F-Series Units)
TD International Index Currency Neutral Fund (F-Series Units)
TD European Index Fund (F-Series Units)
TD Japanese Index Fund (F-Series Units)
TD Income Advantage Portfolio
TD U.S. Equity Advantage Portfolio (Advisor Series and F-Series Units)
TD U.S. Equity Advantage Currency Neutral Portfolio (Advisor Series and F-Series Units)
TD Global Equity Advantage Portfolio (Advisor Series and F-Series Units)
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated July 23, 2007
Mutual Reliance Review System Receipt dated July 24, 2007
Offering Price and Description:
Advisor Series, F-Series, T-Series & S-Series Units @ Net Asset Value
Underwriter(s) or Distributor(s):
TD Investment Services Inc. (for Investor Series units)
TD Investment Services Inc.(for Investor Series units)
TD Investment Services Inc. (for Investor Series and e-Series Units)
TD Investment Services Inc. (for Investor Series and e-Series units)
TD Asset Management Inc. (for Investor Series units)
Promoter(s):
TD Asset Management Inc.
Project #1118475

Issuer Name:
TD Corporate Bond Pool
TD Income Trust Pool
TD World Bond Pool
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated July 23, 2007
Mutual Reliance Review System Receipt dated July 24, 2007
Offering Price and Description:
O-Series Units @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
TD Asset Management Inc.
Project #1118261

Issuer Name:
Uranium Focused Energy Fund
Principal Regulator - Ontario
Type and Date:
Final Prospectus dated July 18, 2007
Mutual Reliance Review System Receipt dated July 20, 2007
Offering Price and Description:
Offering of 21,000,000 Rights to Subscribe for an Aggregate of 7,000,000 Units
Subscription Price: Three Rights and $9.30 per Unit
Underwriter(s) or Distributor(s):
Middlefield Capital Corporation
Promoter(s):
Middlefield Group Limited
Middlefield Energy Management Limited
Project #1086359

Issuer Name:
Valor Ventures Inc.
Principal Regulator - British Columbia
Type and Date:
Final Prospectus dated July 20, 2007
Mutual Reliance Review System Receipt dated July 24, 2007
Offering Price and Description:
$200,000.00 or 2,000,000 Common Shares PRICE: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Canaccord Capital Corporation
Promoter(s):
Marc Cernovitch
Project #1121579

Issuer Name:
Verenex Energy Inc.
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated July 19, 2007
Mutual Reliance Review System Receipt dated July 19, 2007
Offering Price and Description:
$100,050,000.00 - 6,900,000 Common Shares Price: $14.50 per Common Share
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
Haywood Securities Inc.
Canaccord Capital Corporation
Orion Securities Inc.
Promoter(s):
-
Project #1128265

Issuer Name:
Westport Innovations Inc.
Principal Regulator - British Columbia
Type and Date:
Final Short Form Prospectus dated July 19, 2007
Mutual Reliance Review System Receipt dated July 19, 2007
Offering Price and Description:
$51,269,824.00 - 16,538,653 Common Shares Price: $3.10 per Common Share
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
Canaccord Capital Corporation
Promoter(s):
-
Project #1128252

Issuer Name:
Zarlink Semiconductor Inc.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated July 24, 2007
Mutual Reliance Review System Receipt dated July 24, 2007
Offering Price and Description:
Cdn$75,000,000.00 - 75,000 Subscription Receipts, each representing the right to receive Cdn$1,000 principal amount of 6.0% Convertible Unsecured Subordinated Debentures Price: Cdn$1,000 per Subscription Receipt
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
National Bank Financial Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
Promoter(s):
-
Project #1128797

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Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	Bloomberg Tradebook (Bermuda) Ltd.	Limited Market Dealer (Non-Resident)	July 17, 2007
New Registration	Execution, LLC	International Dealer	July 19, 2007
Consent to Suspension (Rule 33-501 - Surrender of Registration)	ETF Capital Management Inc.	Investment Counsel and Portfolio Manager	July 20, 2007
New Registration	Steinberg Asset Management, LLC	International Adviser	July 20, 2007.
New Registration	Centennial Capital Corporation	Limited Market Dealer	July 20, 2007
New Registration	G-Trade Services LLC	International Dealer	July 23, 2007
New Registration	ETF Capital Management	Investment Counsel and Portfolio Manager and Limited Market Dealer	July 23, 2007
New Registration	Shoreline Pacific Canada Inc.	Limited Market Dealer	July 24, 2007
New Registration	Investor Resources Group, LLC	International Adviser (Investment Counsel & Portfolio Manager)	July 25, 2007

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Chapter 13

SRO Notices and Disciplinary Proceedings

13.1.1 MFDA Hearing Panel Approves Settlement Agreement with Robert Franklin Leer

NEWS RELEASE
For immediate release

MFDA Hearing Panel Approves Settlement Agreement with Robert Franklin Leer

July 19, 2007 (Vancouver, British Columbia) – A Settlement Hearing in the matter of Robert Franklin Leer was held today before a Hearing Panel of the Pacific Regional Council of the Mutual Fund Dealers Association of Canada ("MFDA"). The Hearing Panel approved the Settlement Agreement between the MFDA and Robert Franklin Leer. The following is a summary of the Orders made by the Hearing Panel:

- The Respondent shall complete an ethics or conduct and practices course acceptable to Staff of the MFDA within one year;
- A fine in the amount of $8,000; and
- Costs in the amount of $2,000.

A copy of the Settlement Agreement with Robert Leer is available on the MFDA website at **www.mfda.ca**.

The Mutual Fund Dealers Association of Canada is the self-regulatory organization for Canadian mutual fund dealers. The MFDA regulates the operations, standards of practice and business conduct of its 162 Members and their approximately 75,000 Approved Persons with a mandate to protect investors and the public interest.

For further information, please contact:
Shaun Devlin
Vice-President, Enforcement
(416) 943-4672 or sdevlin@mfda.ca

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